THE PROVINCIAL

SMALL CAUSE COURTS ACT

No. IX OF 1887.

WITH NOTES

AND

AN APPENDIX.

BENGAL SECRETARIAT LIBRARY.

PUBLISHED

BY

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PREFACE.

The object of this book is to supply the public and the profession with a cheap and handy edition of the Provincial Small Cause Courts Act. All the rulings of the several High Courts and the Privy Council up to date bearing upon the Act have been quoted. The report of the Select Committee, the Statements of Objects and Reasons, the rules framed by the High Court of Calcutta and by the Government of Bengal, the Lists of Chapters and Sections of the Code of Civil Procedure applicable to the present Act and of suits cognizable by Courts of Small Causes have been embodied in the Appendix. References have also been given to the Articles of the Limitation Act applicable to each of those suits.

I have spared no pains to render this volume in every way useful to those for whom it is intended and shall think my labours amply repaid if the work be of the least assistance to them.

I would solicit the co-operation of all legal practitioners in helping me by pointing out any errors that may come to their notice and suggesting any improvement that may be needed, in case the book be so fortunate as to reach a second edition.

C. N. G.

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Section of Act IX of 1887.	Section of Act XI of 1865.	Reference to other Acts.
1 (new)		
2	2	
3 (*a*)		Act xiv of 1882, s. 3.
3 (*b*)	12	Cf. Act ix of 1860, Mad: Regs: iv & v of 1816; Mad: Act iv of 1883.
3 (*c*)	Sec: 49	Act xv, 1882, s. 1 ; ss. 44 and 45 vic. c. 58 ; Act iii, 1880, Chap. iii ; and Act xviii, 1884.
4	1	
5	ss. 3 & 5	
6	13	
7	14	
8 (1)	15	Act xvii of 1875, s. 94.
8 (2)		Act vi, 1871, s.7.
8 (3)		Act xiv, 1882, s. 25.
8 (4) (new)		
9 (new)		
10	ss. 29, 30 and 31	
11 (1) and (2)	32, 33 & 34	
11 (3)		Act xviii, 1884, s. 5.
12 (1), (2), (3) and (4)	35, 36 & 40	
12 (5)	44	
13 (new)		
14 (1)		Act xv, 1882, s. 13.
14 (2)		Act xviii, 1884, ss. 14 cl : (*f*).
15 (1) (new)		
15 (2)		Act xv, 1882, ss. 18 & 19.
15 (3)	7	
16	12	Act xvii, 1879, s. 6.
17 (1)	21	Act xiv, 1882, s. 5.
17 (2)		Act xiv, 1882, s. 336.
18 (1) & (2)	41	

Section of Act IX of 1887.	Section of Act XI of 1865.	Reference to other Acts.
18 (3)		Act xiv, 1882, s. 646.
19	37	
20	38 and 43	
21 (1) & (2)	39	
21 (3)		Act xviii, 1884, s. 43.
22 (new)		
23 (new)		
24 (new)		
25 (new)		
26 (new)		
27	21	
28	4, 46 & 53	Act xv, 1882, s. 90.
29	4	
30	3	
31	51	
32 (new)		
33 (new)		
34 (new)		
35 (new)		
36		Act xv, 1882, s. 37.
37		Act xvi, 1885, s. 27.
Sched : I (new)		
Sched : II (1) (new)		
Sched: II (2) (new)		
Sched. II (3)		Act xv, 1877, Sch. II, art. 14.
" " (4)		Act xv, 1877, Sch. II, arts. 3, 10, 46, 47, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144 and 148.
" " (5)		
" " (6)		Act xv, 1877, Sch: ii, arts. 147 and 148.
" " (7)		Act xv, 1877, Sch. ii, art. 130.
" " (8)	6 proviso (4)	Act xv, 1877, Sch. ii, art. 110.
" " (9)		Act xv, 1877, Sch ii, art. 130.
" " (10)		Act xv, 1877, Sch ii, art. 41.

Section of Act IX of 1885.	Section of Act XI of 1865.	Reference to other Acts.
Sch. II (11)		Act xv, 1877, Sch ii, arts. 15, 111, 121, 125, 126 and 132.
„ „ (12)		Act xv, 1877, Sch. ii, arts. 124 and 131.
„ „ (13)		Act xv, 1877, Sch. ii, art. 132.
„ „ (14)		Act x, 1870, s.40.
„ „ (15)		Act I, 1877, Chaps. II & IV; and Act xv, 1877, Sch. ii, arts. 113 and 114.
„ „ (16)		Act I, 1877, Chaps. III & V; and Act xv, 1877, Sch. ii, art. 91.
„ „ (17)		Act I, 1877, Chap. X.
„ „ (18)		Act xv, 1877, Sch. ii, arts. 98 and 100.
„ „ (19)		Act I, 1877, Chap. VI; and Act xv, 1877, Sch. ii, arts. 92, 93, 118, 119, 129 and 131.
„ „ (20)		Act xv, 1877, Sch. ii, art. 11.
„ „ (21)		Act xv, 1877, Sch. ii, arts. 12, 15 and 44.
„ „ (22)		Act xv, 1877, Sch. ii, art. 94.
„ „ (23)		Act xv, 1877, Sch. ii, arts 13 & 95.
„ „ (24)		Act xv, 1877, Sch. ii, arts. 1 and 45.
„ „ (25)		Act xv, 1877, Sch. II, arts. 117 and 122.
„ „ (26)		
„ „ (27)		Act xv, 1877, Sch. ii, art. 43; Act x of 1865 & V of 1881.
„ „ (28)	6, proviso (2)	Act xv, 1877, Sch. ii, art. 123.

Section of Act IX of 1885.	Section of Act XI of 1865.	Reference to other Acts.
Sch. II (29)	6, proviso (1)	Act xv, 1877, Sch. ii, art. 106.
„ „ (30)		Act xiv, 1882, s. 213.
„ „ (31)		Act xv, 1877, Sch. ii, arts. 88, 105 and 109.
„ „ (32)		
„ „ (33)		
„ „ (34)		Act xv, 1877, Sch. ii, arts. 86 and 87.
„ „ (35)	6 proviso (3)	Act xv, 1877, Sch. ii, arts. 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 36, 37, 38, 42 and 115.
„ „ (36)		Act xv, 1877, Sch. ii, arts. 103 and 104.
„ „ (37)		Act xv, 1877, Sch. ii, arts. 34 and 35.
„ „ (38)		Act xv, 1877, Sch. ii, art. 128.
„ „ (39)		
„ „ (40)		
„ „ (41)		Act xv, 1877, Sch. ii, arts. 99 and 107.
„ „ (42)		
„ „ (43)		Act xv, 1877, Sch. ii, art. 16.
„ „ (44)		

ABBREVIATIONS.

I. L. R. Cal.	...	Indian Law Reports, Calcutta Series.
I. L. R. Bom.	...	Indian Law Reports, Bombay Series.
I. L. R. Mad.	...	Indian Law Reports, Madras Series.
I. L. R. All.	...	Indian Law Reports, Allahabad Series.
B. L. R.	...	Bengal Law Reports.
C. L. R.	...	Calcutta Law Reports.
W. R.	...	Sutherland's Weekly Reporter.
Moo. I. A.	...	Moore's Indian Appeals.
M. H. R.	...	Madras High Court Reports.
N. W. P.	...	Reports of the North West Provinces.
B. H. R.	...	Bombay High Court Reports.
S. C. C.	...	Small Cause Court.
App.	...	Appendix.
P. C.	...	Privy Council.
H. C. C. O.	...	High Court Circular Order.
H. C. G. L.	...	High Court General Letter.
C. C. P.	...	Civil Procedure Code.
F. B.	...	Full Bench.
S. V.	...	Special Volume.
A. J.	...	Appellate Jurisdiction.
Art.	...	Article.
Sch.	...	Schedule.
S.	...	Section.

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THE PROVINCIAL SMALL CAUSE COURTS ACT.

NO. IX. OF 1887.

RECEIVED THE G.-G.'S ASSENT ON 24TH FEBRUARY 1887.

An Act to consolidate and amend the law relating to Courts of Small Causes established beyond the Presidency-towns.

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WHEREAS it is expedient to consolidate and amend the law relating to Courts of Small Causes established beyond the local limits for the time being of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William in Bengal and at Madras and Bombay; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Title, extent, and commencement.

1. (1) This Act may be called the Provincial Small Cause Courts Act, 1887.

(2) It extends to the whole of British India; and

(3) It shall come into force on the first day of July, 1887.

This Act extends to the whole of British India including the Scheduled Districts. The exclusion of the Scheduled Districts from the operation of the Act would have made it doubtful as to the application of the Act to *Kurachi* in the Province of Sinde which is a Scheduled District and where a Small Cause Court has been established. The Code of Civil Procedure (Act XIV of 1882) does not apply to the Scheduled Districts but such portions of the said Code as have reference to the Small Cause Courts Act shall have force in the Scheduled Districts by the operation of this Act from the first day of July, 1887.

(*For Scheduled Districts See Act XV of 1874.*)

Repeal

2. (1) The enactments specified in the first schedule are repealed to the extent mentioned in the third column thereof.

(2) But all Courts constituted, limits fixed, places appointed, appointments, declarations, and rules made, jurisdiction and powers conferred, forms prescribed, directions given and notifications published under Act No. XI of 1865 (*an Act to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*), or under any enactment repealed by that Act, shall, so far as may be, be deemed to have been respectively constituted, fixed, appointed, made, conferred, prescribed, given and published under this Act.

(3) Any enactment or document referring to Act No. XI of 1865 or to any enactment thereby repealed shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

Savings.

3. Nothing in this Act shall be construed to affect —

(*a*) any proceedings before or after decree in any suit instituted before the commencement of this Act ; or

Under the provisions of this Section when a suit has been heard and decreed by a Small Cause Court before this Act comes into force, the Court will be able to execute its decree notwithstanding the suit is one of those which this Act excludes from the jurisdiction of the Small Cause Court. A suit for arrears of maintenance claimed upon a special bond for the payment of maintenance was cognizable by a Court of Small Causes under Act XI of 1865, the jurisdiction over such a suit is now vested in the regular (or civil) courts by this Act. Any proceeding in execution of a decree passed in such a suit before the commencement of this Act or in a suit which was instituted before its commencement and subsequently decreed shall not be affected by this Act : (*See Sec : 6 Act 1 of 1868*).

"Decree" is defined in Sec : 2 Act XIV of 1882 thus :— The formal expression of an adjudication upon any right claimed, or defence set up, in a Civil Court, when such adjudication so far as regards the Court, expressing it, decides the suit or appeal. An order rejecting a plaint or directing accounts to be taken or determining any question mentioned or referred to in Section 244, but not specified in section 588 is within this definition :

an order specified in Section 588 is not within this definition.

(*b*) the jurisdiction of a Magistrate under any law for the time being in force with respect to debts or other claims of a civil nature, or of Village Munsifs or Village Panchayats under the provisions of the Madras Code, or of Village Munsifs under the Dekkhan Agriculturists' Relief Act, 1879 (XVII of 1879) ; or

A Small Cause Court has concurrent jurisdiction to try suits for a sum not exceeding 10 Rupees, cognizable by a village munsiff under Sec : 5 Reg : IV of 1816. 5 M. H. R. 45.

Where a pleader resides within the limits of a cantonment and practises as a pleader within the jurisdiction of a Small Cause Court, both the cantonment Magistrate and the Small Cause Court Judge have concurrent jurisdiction over him to the amounts respectively cognizable by them. 4 B. H. R. A. J. 187.

Section 12, Act XI of 1865 (*Sec : 3 cl (b), Act IX of 1887*) does not bar the trial of suits for wages under Rupees 50 against European British subjects, by a Small Cause Court, though it may preserve the jurisdiction of Magistrates in such cases, which was created by 53 Geo. III. Chapter 155 Section 106. *Mirza Rumzan Beg v. Mr. J. Cook* 14 W. R. 428.

(*c*) any local law or any special law other than the Code of Civil Procedure (XIV of 1882).

A "special law" is a law applicable to a particular subject. Sec. 41 I. P. Code.

A "local law" is a law applicable only to a particular part of British India. Sec. 42 I. P. Code.

In all matters of contract and dealing between Hindus,

the law applicable in the ordinary Civil Courts of the country governs Courts of Small Causes. *Woodoy Chand Halder v. Goorgo Churn Mojoomdar* 13 W. R. 148.

An European soldier, doing duty as an army school master not being liable to a Court of Requests, is not exempted from liability to a cantonment Court of Small Causes. 6 M. H. R. 83.

The rules and orders in the Military Code are not binding on a Small Cause Court. 5 B. H. R. A. J. 99.

The Small Cause Courts are bound to adjudicate according to the law which is administered in the other Courts of the mufussil. *Ram bux Chittangeo v. Modhoo Soodun Paul Chowdhry* 7 W. R. F. B. 377.

See para 4 of the Report of the select committee on the bill regarding the observation made on this section. (*Appendix 1.*)

Definition.

4. In this Act, unless there is something repugnant in the subject or context, "Court of Small Causes" means a Court of Small Causes constituted under this Act, and includes any person exercising jurisdiction under this Act in any such Court.

A Subordinate Judge, although invested with the jurisdiction of a Small Cause Court Judge, does not on that account become a Small Cause Court Judge, nor his Court such a Court within the meaning of Act X of 1877. *Bal Krishna v. Lakshman* I. L. R. 3 Bom. 219.

A Court trying any suit withdrawn under Sec. 25 C. C. P. from the Court of a Judge vested with the power of the Court of Small Causes shall be deemed a Court of Small Causes. *Kauleshar Rai v. Dost Muhammad Khan* I. L. R. 5 All. 274.

See also *Nagireddi v. Ramanna* I. L. R. 7 Mad. 592.

Definitions given in the General Clauses Act as well as those that are given in the Civil Procedure Code will apply to this Act. The Code of Civil Procedure gives no definition of the term "immoveable property."

"Immoveable property" as defined in the General Clauses Act, 1 of 1868 includes land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth. A hut is not a moveable property (*Nattu Meah v. Nand Rani* 8. B. L. R. 508) ;—a thatch, especially when severed from the house, is moveable property (*Raj Kumar v. Prannath* 7. B. L. R. 41 app) ;—growing crops are immoveable property (*Gopal Chandra v. Ramjan* 5 B. L. R. 194, 2 C. L. R, 526);—the rights to take juice from date-trees is not a right to immoveable property but falls under the definition of moveable property (*Jalu Namdor v. Beicha Namdor* 3 B. L. R. 394 A. J.) ;—fruit upon trees is moveable property (I. L. R. 3 All. 168); —standing timber i.e. tree is not moveable property (*Umed Ram v. Daulat Ram* I. L. R. 5 All. 564 F. B.) ;—the doors and window-shutters of a *pucca* building are immoveable properties (*Peru Bepari v. Ronuo* I. L. R. 11 Cal. 164).

CHAPTER II.

CONSTITUTION OF COURTS OF SMALL CAUSES.

Establishment of Courts of Small Causes.

5. (1) The Local Government, with the previous sanction of the Governor-General in Council, may, by order in writing, establish a Court of Small Causes at any place within the

territories under its administration beyond the local limits for the time being of the ordinary original civil jurisdiction of a High Court of Judicature established in a Presidency-town.

(2) The local limits of the jurisdiction of the Court of Small Causes shall be such as the Local Government may define, and the Court may be held at such place or places within those limits as the Local Government may appoint.

The words "Local Government" in Act XI of 1865 were not intended to include either a Chief Commissioner or a Collector of a District. *Koshoay Doqn v. Shoay Gan* 14 W. R. 331 and 10 B. H. R. 308.

But "Local Government" now means the person authorized by law to administer executive Government in the part of British India in which the Act containing such expression shall operate, and includes a Chief Commissioner.

Judge.

6. (1) When a Court of Small Causes has been established, the Local Government shall, by order in writing, appoint a Judge of the Court.

(2) The Judge may be the Judge of one Court of Small Causes or of two or more such Courts, as the Local Government directs.

Appointment of times of sitting in certain circumstances.

7. (1) A Judge who is the Judge of two or more such Courts may, with the sanction of the District Court, fix the times at which he will sit in each of the Courts of which he is Judge.

(2) Notice of the times shall be published in such manner as the High Court from time to time directs.

Under the corresponding Sec. 14. Act XI of 1865 a Judge, who is the Judge of two or more Courts could fix times of his sitting subject to the orders of the Local Government. Under the provisions of this Act such times are to be fixed with the sanction of the District Court.

"District Court" includes the principal Civil Court of original jurisdiction (See section 2 Act XIV of 1882).

"High Court" means the Highest Civil Court of appeal in any place (See Sec. 2, cl. 11 of Act I of 1868).

Additional Judge.

8. (1) The Local Government, with the previous sanction of the Governor-General in Council, may, by order in writing, appoint an Additional Judge of a Court of Small Causes or of two or more such Courts.

(2) The Additional Judge shall discharge such of the functions of the Judge of the Court or Courts as the Judge may assign to him, and in the discharge of those functions shall exercise the same powers as the Judge.

(3) The Judge may withdraw from the Additional Judge any business pending before him.

(4) When the Judge is absent, the Additional Judge may discharge all or any of the functions of the Judge.

Suspension and removal of Judges.

9. A Judge or Additional Judge of a Court of Small Causes may be suspended or removed from office by the Local Government.

(See section 26 of Act XII of 1887).

Power to require two Judges to sit as a bench.

10. The Local Government, after consultation with the High Court, may, by order in writing, direct that two Judges of Courts of Small Causes, or a Judge and an Additional Judge of a Court of Small Causes, shall sit together for the trial of such class or classes of suits or applications cognizable by a Court of Small Causes as may be described in the order.

Under Sec 31, Act XI of 1865 the Local Government might without consultation with the High Court require two Judges to sit as a Bench.

Decision in case heard by a bench.

11. (1) If two Judges, or a Judge and an Additional Judge, sitting together under the last foregoing section differ as to a question of law or usage having the force of law, or in constructing a document the construction of which may affect the merits, they shall draw up and refer, for the decision of the High Court, a statement of the facts of the case and of the point on which they differ in opinion, and the provisions of Chapter XLVI of the Code of Civil Procedure (XIV of 1882) shall apply to the reference.

It is of the essence of usages having the force of law that they should be certain, invariable and continuous and well established discontinuance must be held to destroy them. *Tekaet Doorga Pershad Singh v. Tekaetnee Doorga Kooeree* 20 W.R. 154; *Mussamut Natukhee Kooeree v. Chintamun Singh* 20 W. R. 247 ; *Raj Kishen Singh v. Ram Joy Mojumder* 1. L. R. 1 Cal 186. (P. C), 19 W. R. (P. C.) 8 ; *Abraham v. Abraham* 9. Moo I. A. 195 ;

Hari Prasad v. Shedyal, 26 W. R. 55. (P. C); *Lachman v. Akbar Khan* I. L. R. 1 All. 440; *Lutchmuput Singha v. Sadaulla* I. L. R. 9 Cal. 698; *Nil Kist Deb v. Beer Chunder* 12 Moo. I. A. 523. (S. C); *Gunesh v. Moheshur* 6 Moo I. A. 164; *Pachetu Raj Guru Naraian v. Unund* 6 S. D. 282; *Anund v. Dharaj* 5 Moo. I. A. 82; *Muah v. Muah* 15 W. R. (P. C.) 47; *Collector of Madura v. Muttuka Malinga Sathupathy* 20 W. R. 154, 247 (sp. 20).

But in case of usage regarding mercantile business the continuity, certainty or invariability is not required *Jogo Mohan v. Manik Chand* 7 Moo. I. A. 263.

Customs which are immoral or contrary to public policy, justice, equity or good conscience will never be enforced nor sanctioned. See Art 41 of Mayne's Hindoo Law.

The construction of the deposition of witnesses is not a question of law and therefore not a ground of special appeal. *Himmut Ali Khadim v. Nyamutoollah Khadim* 23 W. R. 250.

The recording of the words of a document in a decision would not though wrong on the facts be a misconstruction unless incompatible with the wording. *Kalee Churon Pattur v. Chundi Churn Mundal* 9 W. R. 366.

(2) If they differ on any matter other than a matter specified in sub-section (1), the opinion of the Judge who is senior in respect of date of appointment as Judge of a Court of Small Causes, or, if one of them is an Additional Judge, then the opinion of the Judge sitting with him, shall prevail.

In referring a case for the decision of the High Court it is necessary to draw up a statement of the case and the Court's own opinion. *Dino Nath Addy v. Pay-Sergeant W. Weller* 7 W. R. 165.

An application for a new trial is a point in the proceedings previous to hearing and a Small Cause Court Judge can ask the opinion of the High Court on a question of law upon such an application. *Ishan Chunder Singh v. Haran Sirdar* 11 W. R. 525.

No reference should be made on a simple point merely on the application of the parties unless the Court entertains a doubt upon the question—*Hurish Chunder Talapattur v. Mr. W. P. O'Brien.* 14 W. R. 248.

A point arising upon the application for a new trial may be referred to the High Court—*Nobakumar v. Koylash.* 17 W. R. 518.

A Small Cause Court Judge can submit for reference not only some questions of law or usage having the force of law or some questions as to the construction of a document affecting the merits of the decision but also his inference from the evidence given in the case that there was no privity of contract between the parties. *Gujendra Mohan Shaha v. The Eastern Bengal Railway Company* 18 W. R. 145.

Question which does not arise under this Act should not be referred to the High Court. *Kaminee Soonduree Chowdhurani v. Mudhoo Soodun Mookherjee* 21 W. R. 376.

Judges of Small Cause Courts should propound for the opinion of the High Court such questions only as arise in a suit and no speculative questions. *Petumber Shadhoo Khan v. Doya Moyee Dassee* 12 W. R. 17.

Only questions which arise in the trial of a suit, and not questions which arise on an application for execution can be referred by the Small Cause Courts to the High Court. B. L. R. S. V. (F. B.) 457.

This Section will not interfere with Sec: 617 of the Civil Procedure Code. Under that Section a reference will be allowed in cases heard by a single Judge.

(3) For the purposes of sub-section (2), a Judge permanently appointed shall be deemed to be senior to an officiating Judge.

Registrar.

12. (1) The Local Government may appoint to a Court of Small Causes an officer to be called the Registrar of the Court.

(2) Where a Registrar is appointed, he shall be the chief ministerial officer of the Court.

(3) The Local Government may, by order in writing, confer upon a Registrar, within the local limits of the jurisdiction of the Court, the jurisdiction of a Judge of a Court of Small Causes for the trial of suits of which the value does not exceed twenty rupees.

(4) The Registrar shall try such suits cognizable by him as the Judge may, by general or special order, direct.

(5) A Registrar may be suspended or removed from office by the Local Government.

Other ministerial officers.

13. Subject to any enactment for the time being in force and to any orders made by the Local Government in this behalf, the law or practice for the time being applicable to the appointment, punishment and transfer of ministerial officers of a Civil Court of the lowest grade competent to try an original suit of the value of five thousand rupees in that portion of the territories administered by the Local Government in which a Court of Small Causes is established shall, so far as it can be made appli-

cable, apply to the appointment, punishment and transfer of ministerial officers of the Court of Small Causes other than the Registrar, if any, of that Court.

See Sections 31 and 34 of Act XII of 1887.

Duties of ministerial officers.

14. (1) The ministerial officers of a Court of Small Causes shall, in addition to any duties mentioned in this Act, or in any other enactment for the time being in force, as duties which are or may be imposed on any of them, discharge such duties of a ministerial nature as the Judge directs.

A clerk of a Small Cause Court is not authorized to sign the copy of the judgment and certificate. 3 W. R. S. C. C. 7. But now he is authorized to do so. See H. C. C. O. No. 4 of 2nd February 1885. & No. 27 of 6th September 1864.

(2) The High Court may make rules consistent with this Act, and with any other enactment for the time being in force, conferring and imposing on the ministerial officers of a Court of Small Causes such powers and duties as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed are to be exercised and performed.

For Rules framed by the High Court under the old Act see App. II.

CHAPTER III.

JURISDICTION OF COURTS OF SMALL CAUSES.

Cognizance of suits by Courts of Small Causes.

15. (1) A Court of Small Causes shall not take cognizance of the suits specified in the second schedule as suits excepted from the cognizance of a Court of Small Causes.

(2) Subject to the exceptions specified in that schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes.

(3) Subject as aforesaid, the Local Government may, by order in writing, direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes mentioned in the order.

This section makes a considerable change in the former law.

Section 6 of Act XI of 1865 was based on the principle of inclusion of suits cognizable by a Court of Small Causes, whilst this section is based on the principle of exclusion of such cases. The Provincial Small Cause Courts shall now try all suits of civil nature the money value of which does not exceed Rs. 500 except such suits as are mentioned in the Schedule of this Act. Schedule II of the Indian Limitation Act (XV of 1877) gives list of all kinds of suits. By comparing the list of suits given in the Schedule II of this Act with that of the

Limitation Act, a list has been prepared shewing the suits cognizable by Courts of Small Causes with the period of limitation applicable to each case.

For the list see Appendix III.

The Jurisdiction of the Court is determined by the nature of the relief sought and not by the nature of the defence, or that of evidence. The mere prayer for alternate relief which the plaintiff is not entitled to can not deprive the Court of its jurisdiction. *Nunda Kumar v. Ishan Chandra* 1 B. L. R. 91.

Plaintiff brought a suit in the Calcutta Court of Small Causes to recover damages for trespass to certain immoveable property of which he proved he was in possession, defendant denied the right of the plaintiff to the property and contended that such a suit was one for the determination of a right to or interest in immoveable property, as was, therefore, not maintainable in the Small Cause Court. *Held* the Court had jurisdiction to entertain such a suit. *Peary Mohan Ghosaul v. Harran Chander Gangooly* I. L. R. 11 Cal. 261.

The Small Cause Court has also jurisdiction to try the following suits for recovery of money paid by plaintiff to save his tenure from sale by defendants, on the allegation that the rent of the tenure had been previously paid by him. *Krishna Kishore Saha v. Bireshur Mozoomdar* I. L. R. 4 Cal 595 and 3 C. L. R. 177 ; a suit for the recovery of the amount paid by the plaintiff, on account of the arrears of revenue in respect of the land purchased at an execution sale. *Alimazhar v. Gopi Nath* I. L. R. 4 All. 152, see also *Nath Prasad v. Baij Nath* I. L. R. 3 All 66; a suit to recover money as damages measuring the loss sustained by a plaintiff compelled to pay money to save from sale in execution of a decree an estate purchased from the defendant agreeing to pay money out of

the purchase money. *Ramgutty Gangooly v. Kuralee Prashad Gangooly* 17 W.R. 446 ; suit against sons (Hindus) for money on a bond executed by their father. *Gopal v. Ramayyangar* I. L. R. 4 Mad 236 ; suit for damages for value of crops misappropriated notwithstanding that the case involved a question of title. *Hedaetoolla v. Shaikh Karloo.* 7 W. R. 73 ; suit for damages for an amount notwithstanding that it involves an enquiry into a question of right. *Luckhee Debia Chowdhurani v. Shaikh Malick.* W. R. S. 237 ; suit for recovery of a sum alleged to have been paid by plaintiff to defendant under a mistake ; *Agrah Saving's Bank Limited v. Sriram Mitter* I. L. R. 1 All 388 ; suit under Sec. 72 of Act IX of 1872 (Indian Contract Act) to recover from a creditor the amount of an over-payment made to him by mistake. *Badrunnisa v. Mohammad Jan* I. L. R. 2 All 671; suit for damages or order to fill up an excavation in absence of any ground for the latter sort of relief sought. *Nunda Coomar v. Ishan* 10 W. R. 130 ; suits for damges for breaking down a wall when the defendant pleads purchase and plaintiff objects to the validity of the sale on the ground that it was made by a Hindu widow without necessity. *Sumbhu Chander Mowlick v. Pran Kristo Mowlick* 13 W. R. 105 ; suits for recovery of damages on acount of illegal removal of crops *Ram Jebun Koyee v. Shahzadee Begum* 9 W. R. 336 ; *Daur Sinha v. Rugh Nundun Sinha* 3 N. W. P. 101 ; suits for money collected by parties from an estate by virtue of an obligation to pay it to the plaintiff. *Bhugobutty Churn Rajpaye v. Sharada Prashad Sookul* 22 W. R. 298 ; suits for money had and received by the defendant for the use of the plaintiff. *Lachman Prasad v. Chammilal* I. L. R. 4 All. 6 ; suits for damages sustained on account of the fraudulent omission on the part of the decreeholder to certify to the court payments made on a decree. *Bhagaban*

Tantee v. Gobind Chunder Roy 9 W. R. 210; suits to recover damages for the injury sustained by a plaintiff by reason of the fraudulent concealment and misrepresentation of facts *Fatima Begum v. Syed Moosa* 18 W. R. 128; suits for damages for the loss sustained by the plaintiff for the detention of his means for carrying on the business 6 M. H. R. 34; suits to recover money from a defendant who by dishonest and wrongful objection caused the plaintiff not to recover money from his judgment debtor are suits for damages *Kalian Singh v. Chunilal* I. L. R. 6 All. 10; suits for the price paid as damages in consequence of a vendor failing to complete a title to land *Charoo Khan v. Doorga Monee* 9 W. R. 498; suits for damages for detention of materials of a house *Kishub Chunder Shaha v. Brommomoyee Debea* 1 W. R. 35; suits for damages against a person refusing to quit the land or pay rent *Bhooban Mohan Bose v. Chandra Nath Bannerji* 17 W.R. 69, but see the case of *Kalidas v. Vallabh Das* I.L. R. 6 Bom. 79; suits for damages for the recovery of the price of skin of dead animals 8 B. H. R. A. J. 23; suits for damages for breaking down and removing bricks from a wall *Shumbhoo Chunder Mowlick v. Pran Kristo Mowlick* 13 W. R. 105; suits for the fruit upon trees or damages in lieu thereof *Nasir Khan v. Karamat Khan* I. L. R. 3 All. 168; suits for the price of trees cut down and removed *Shib Deen Tewary v. Bukshee Ram Protap Singh* W. R. Mis. 3; suit to recover money which plaintiff paid for defendant *Gopal Surnokar v. Goya Ram Sircar* 13 W. R. 273; suits for money illegally exacted as rent under a *mamlatdar's* order *Gonesh Hatty v. Harjivan* I. L. R. 8 Bom. 188; or as damages *Collector of Cawnpur v. Kedari* I. L. R. 4 All. 19; suits for the price of thatch of a house *Raj Kumar v. Prainath Mookherji* 15 W. R. 499; where one of the two sharers sells a joint moveable property without the consent of the other, the party not

consenting can sue the purchaser for the price of his share *Radha Nath Shaha v. Kameenee Sundri Dasee* 2 W. R. 37.

A Small Cause Court can also take cognizance of a suit for money in the hands of a third person to which the plaintiff is entitled *Sunkar Lal Pattak Gyawal v. Mussamut Ramkalee Dhamin* 18 W. R. 104 S. C ; *Rasmonee Debea v. Mahamad Hafezulla* 3 B. L. R. App. 96 ; or of a suit for damages caused by the wrongful act of some of the legal representatives in withdrawing the whole amount of a debt *Kumrunnessa v. Sujan* 10 C. L. R. 31 ; or of a suit where the question as to custom was incidentally raised for the purpose of the suit which was simply one for the value of moveable or personal property *Mr. Thomas Grant v. Madhoo Soodun Singh* 10 W. R. 79 ; or of a suit for money paid to the decree-holder to be applied in satisfaction of a decree but not so applied *Tareenee Churn Roy v. Gopal Kristo Roy* 2 W. R. Ref. 55; or of a suit to recover a share of money which had been recovered by a co-plaintiff under a decree *Debidas v. Lachman Singh* I. L. R. 7 All. 896 ; or of a suit for damages for refusing to take delivery of goods 3 M. H. R. 170 ; or of a suit for money due on a contract *Dyebukee Nundan Sen v. Madhoomutty Goopta* I. L. R. 1 Cal. 123, 24 W. R. 478 ; or of a suit by a servant for the recovery of money borrowed by him for his master and spent partly in payment of his debt and partly for his private use *Rashmonee Debia v. Rajah Ram Sircar* 15 W. R. 86 ; or of a suit to enforce a contract pledging moveable property 2 M.H. R. 474 ; or of a suit for money paid in excess of the specified share *Joynarain Manjee v. Madhoo Soodan Gorait* 2 W. R. 134; and see the case of *Ram Bux v. Madhoo Soodan Pal Chowdhry* 7 W. R. 377 ; *Elam Paramanik v. Sefaetullah Sheik* 10 W. R. 85 ; *Banoo v. Nuraian Shahoo* 13 W. R. 233 ; or of a suit for wages

against a European British subject *Mirza Ramzan Baq v. Cook* 14 W. R. 428 ; or of a suit for damages sustained consequent on the attachment under Section 477 C. C. P. of certain moveable properties, fishing nets &c. *Goburdhan Majhee v. Banee Chunder Dass* 21 W. R. 375 ; or of a suit for recovery of a certain sum of money paid in excess of rent due *Sib Sahaya v. Bir Chandra Jubaraj* 2 B. L. R. A. 172 ; or of a suit by surety for recovery of a certain sum which he had to pay on account of his principal *Shaboo Majee v. Noorai Mullah, Sheik Joneep v. Sheikh Noboo, Bharat Chunder Dutt v. Dengar Gope*, B. L. R. S. V. F. B. 691 ; or of a suit upon a contract for the payment of a stipulated sum per month to the owner for the leave granted by him to the defendants to use a path across his land *Wooma Persad Shaw v. Shumsher Sirdar* 4 W. R. S. C. C. 10 ; or of a suit to recover money under an implied contract *Shaboo Majee v. Noorai Mollah, Shaik Joneep v. Shaik Nubboo, Bharat Chunder Dutt v. Dingar Gope* 7 W. R. F. B. 386 ; *Soham v. Mathuradas* I. L. R. 6 All. 449 ; or of a suit on an agreement to hold land for a term of years in consideration of money lent, to realize the rent to give credit thereof for interest, pay rent due to the plaintiff's landlord and pay the balance to the plaintiff *Nobin Chunder Vodro v. Kedar Nath Chuckerbutty* 16 W. R. 228 ; or of a suit brought under Sec. 53 of the Registration Act XX of 1866 *Sreemunt Sen v. Gorai Gazee* 18 W. R. 199.

Exclusive jurisdiction of Courts of Small Causes.

16. Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the

jurisdiction of the Court of Small Causes by which the suit is triable.

A suit will lie in a Small Cause Court within the local limits of whose jurisdiction the plaintiff ordinarily resides though he has a dwelling house within the local limits of the jurisdiction of another Small Cause Court which he occasionally visits and wherein the cause of action arose 10 B. H. R. 409.

A suit brought for the recovery of rent of a house occupied by the plaintiff for a temporary purpose within the limits of the jurisdiction of a Small Cause Court shall be cognizable by another Small Cause Court where he permanently resides and where he returned before the hearing of the suit in the first Court 5 M. H. R. 471.

Temporary imprisonment beyond the jurisdiction of a Small Cause Court is not sufficient to bar the jurisdiction of the Court in respect of defendants who formerly resided within its jurisdiction and whose families continue to reside there *Gopal Chandra Sircar v. Kurnodhar Moochee* 7. W. R. 349.

To dwell in a place, is to have one's permanent abode there *Madho Das v. Sitan Ram* 3 N. W. P. 121 ; *Porgash Paray v. Hachim Khansamah* 7 W. R. 417 ; 4 N. W. P. 25, 26 ; 5 M. H. R. 101 ; 8 M. H. R. 304 ; 10 B. H. R. 409.

The erroneous dismissal of a suit by a Small Cause Court can not warrant the re-institution of the suit in the Munsiff's Court for the same cause of action 3 M. H. R. 86.

An order from the High Court is necessary to enable a Court of Small Causes to entertain a suit against several obligors, one of whom at the time of filing the plaint is neither resident nor personally working for gain within the limits of its jurisdiction. Such order

should be applied for after the reception of the plaint, upon a statement of the circumstances of the particular case 1 M. H. R. 103.

Several claims, each of which separately is within the Small Cause jurisdiction of a District Munsiff, may be joined together and formed the basis of a suit in the Small Cause Court 4 M. H. R. 334.

A tradesman cannot, by keeping separate accounts of his dealings with a customer, split his cause of action so as to bring his suit within the jurisdiction of a Small Cause Court (*O. J.*) *Cassum Jooma v. Khucker Liladhur Kissowjee* I. L. R. 2 Bom. 570.

This does not apply to village Munsiffs established in Madras under Reg IV, 1816, Sec. 5 to try suits not exceeding 10 Rs, and in such cases the Munsiffs and Small Cause Courts possess *concurrent* jurisdiction, and one does not exclude the other *Parasoorama Pillay v. Colla Ramasawmy* 5 Mad. 45.

A suit within the cognizance of the Small Cause Court cannot be lawfully transferred for trial to a Munsiff's Court *Joobraj Chowkeedar v. Miss Whelan* 13 W. R. 399.

A person who carries on business at a place by a commission agent, to whom he only consigns goods, cannot be said to carry on business or personally work for gain within the local limits of a Court, where the commission agent resides *Gopee Mohan Roy v. Protap Chunder Roy* 11. W. R. 530.

A Court of Small Causes is competent under Sec. 3 Act XL of 1858 to allow any relative of a minor to institute or defend a suit in his behalf without a certificate of administration, where it has jurisdiction in relation to the subject matter of the suit *Khanto Bewah v. Nund Ram Nath* 15 W. R. 370.

A mofussil Court of Small Causes has no jurisdiction

under S.6 of Act. XI of 1865 to entertain a suit for a refund of money paid as rent in which it is found that the payment was made to a wrong person voluntarily and under no mistake as to that person being entitled to receive it, but with the object of defrauding an intermediate tenure-holder *Ram Chand Dutta v. Mosai Santal* I. L. R. 11 Cal. 738.

A Small Cause Court has no power to entertain a suit for a declaratory decree. There is nothing to prevent a Small Cause Court from determining whether a person, who has been made a co-plaintiff and claims as a co-parcenor of the original plaintiff, has any right to the property sued for. The decree in such a case, if given in favor of the plaintiffs, must order that the parties do recover possession of the property sued for in such shares as the Judge may consider them to be entitled *Akbar Ali v. Jezuddin* I. L. R. 8 Cal 399.

A Munsiff has no jurisdiction as a Small Cause Court to take cognizance of a suit against defendants not resident within his jurisdiction 3 M. H. R. App. 21.

An action for cattle or the value of cattle cannot lie in a Civil Court having jurisdiction within the local limits of Small Cause Court jurisdiction 2 W. R. S. C. C. 55.

The fact of being a soldier is no bar to an action and is not the basis of a valid plea to the jurisdiction 6 M. H. R. 83.

Where a Munsiff is vested under Act VI of 1871, with powers up to Rs 50, in a place in which there is a Court of Small Causes constituted under Act XI of 1865 with jurisdiction extending up to Rs 500, a suit of the nature cognizable by Small Cause Courts, being in amount or value below Rs 50 ought, by the operation of Act VIII of 1859 Sec. 6 to be instituted in the Court of the Munsiff exercising Small Cause Court powers *Dwarka*

Nath Dutt v. Bhahu Hawoldar ; *Chundoo Vistee v. Sodagar Vistee* 22 W. R. 457

CHAPTER IV.

PRACTICE AND PROCEDURE.

Application of the Code of Civil Procedure.

17. (1) The procedure prescribed in the chapters and sections of the Code of Civil Procedure specified in the second schedule to that Code, as amended by this Act, shall, so far as those chapters and sections are applicable, be the procedure followed in a Court of Small Causes in all suits cognizable by it and in all proceedings arising out of such suits.

It is not competent to a Judge of Small Cause Court to raise any objection to the verification of a plaint by an agent, after such verification has been expressly sanctioned by him, at the commencement of the suit *Rajh Sutto Churn Ghosal v. Suroop Chunder Dass* 12 W. R. 465.

The time for service of summons on a defendant must in all cases be fixed by the rules for regulating the practice of the Court *Bhairabdan Ram Chand v. Bassant Lal Bhagat* 9 B. L. R. 256. See also High Court rules of practice in Appendix II.

A Magistrate is not bound to execute a Commission of a Small Cause Court directing him to take the evidence

of prisoners in Jail in a case in which none of the circumstances existed authorizing that Court to issue the commission *Gopal Chunder Sircar v. Kurnodhar Moochee* 7 W. R. 349.

Where a Small Cause Court Judge, after granting a new trial, referred the matter to arbitration and the arbitrators failed to make any award : Held, that it was necessary that a fresh judgment should be given by the Judge *Surba Chunder Acharjee v. Ram Buksh Chitlangee* 24 W. R. 469.

When a debtor attended at a Small Cause Court as a witness under a Subphœna in a suit which was fixed for trial on that day, it was held that he was privileged from arrest while going to the Court, staying there and returning from it—in the matter of *Omirto Lal Dey* I. L. R. 1 Cal. 78 ; and this is the general rule—but where a warrant is directed against the person under Sec. 256 C. C. P. the arrest may take place at any time, and the debtor can claim no privilege *De Penning v. Debendra Nath Moitra* 9 W. R. 549.

All sales by Small Court Judges should be conducted strictly in accordance with section 251 of Act VIII of 1859 (297 of Act XIV of 1882) *Indro Narain Deb v. Gobind Chander Dhur* 15 W. R. 368.

Under Act XI of 1865 the decree-holder had to proceed first against the moveable property of the judgment-debtor and if the decretal amount was not satisfied by such sale he had to get satisfaction of the decree by the sale of immoveable property through the Court in whose jurisdiction it lay—See I. M. H. R. 191 ; 5 M.H.R. 275 ; *Kahanarama v. Ranga* I. L. R. 8 Mad 8 ; *Nattoo Meah v. Nundranee* 17 W. R. F. B. 309 ; 8 B. L. R. F. B. 508. But under the new Act the decree-holder is not bound to bring the moveable propertyto sale in execution before he

can proceed against immoveables belonging to his judgment-debtor—see also Sec. 223 C. C. P.

A Small Cause Court in which a decree is passed is competent to entertain an application for its execution, even if the debtor's residence and moveable property are situate in a place which has since the decree been excluded from that Court's jurisdiction.

In such execution the course to be pursued is that prescribed by Sections 285 and 286 of Act VIII of 1859. *Kodoo Mandul v. Shushee Shikhur Sircar* 16 W. R. 228.

A decree of a Small Cause Court can be executed by it at any place within the local limits of the District Court without having recourse to the procedure under Sec. 648. C. C. P. *Budan Bebajea v. Kala Chand Bebajea* I. L. R. 4 Cal. 823; 2 B. L. R. A. J. 77 ; 3 W. R. S. C. C. 7.

A decree of a Small Cause Court may be sent to another Court for execution, if no property is found within the jurisdiction of the Court passing the decree ; and if the Court to which the decree is sent be in another zillah, the decree must be sent to the principal Court of original jurisdiction in such district 9 W. R. (F.B.) 175 ; B. L. R. S. V. (F. B.) 886.

Salaries or other debts actually due from a Railway Company to any of its servants can be attached in satisfaction of Civil Court decrees under Sec. 236 of Act VIII. of 1859. A Small Cause Court need not make the High Court or any other Court the medium of attachment.

Debts are to be attached by written order made by the attaching Court, prohibiting the creditor from receiving the debts, and the debtor from making payment to any person, until the further order of the Court. Such written order is to be hung up in some conspicuous part of the Court house, and a copy is to be addressed, directed, and sent registered by post to the agent of the Railway Com-

pany at the head office of the company, notwithstanding the head office is out of the jurisdiction of the Small Cause Court.

Held, that it was a mistake of a Small Cause Court to direct the chief paymaster of a Railway Company to attach the pay due to the judgment-debtor (a servant of the company). The order of attachment must be made by the Court, and a copy served upon the debtor. *In the matter of J. Hollick.* 10 W. R. 447.

Certain moveable property was attached in execution of decrees of the Small Cause Court at Ahmedabad. After the attachment, but before the sale of the attached property, other creditors of the same judgment-debtor obtained decrees against him in the Court of the subordinate Judge at the same place, and applied to it for attachment of the same property in execution of their decrees. The Subordinate Judge, accordingly attached it by prohibitory orders issued to the Judge of the Small Cause Court. After the sale, the holders of the decrees, obtained in the Subordinate Judge's Court, claimed a rateable share in the assets realized by the Small Cause Court, under Act X of 1877 S. 295. *Held*, that they were not entitled to any share in the assets until after satisfaction of the decrees of the Small Cause Court *Jetha Madharji v. Najeralli Abhramji* I. L. R. 4 Bom. 472; followed in *Krishna v. Chander* I. L. R. 5 Bom. 198.

A fresh vakalatnama is not necessary in an application for a new trial before a Small Cause Court, where the pleader presenting the application is one who was employed in the original suit *Rajah Sutto Churn Ghossal v. Suroop Chundro Dass* 12 W. R. 465.

Provided that an applicant for an order to set aside a decree passed *ex parte* or for a review of judgment shall, at the time of presenting his appli-

cation, either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give security to the satisfaction of the Court for the performance of the decree or compliance with the judgment, as the Court may direct.

(2) Where a person has become liable as surety under the proviso to sub-section (1), the security may be realized in manner provided by section 253 of the Code of Civil Procedure.

For *ex parte* decrees see Sec. 108 C. C. P.

For review see Sec. 623 C. C. P.

The notice clause in section 21 of Act XI of 1865 has been repealed by the present Act. Under Act XI of 1865, a person wishing to have decree set aside might apply for (a) new trial under Sec. 21 of Act XI of 1865 ; (b) a review under Chap, XLVII of the Civil Procedure Code, or both a new trial and review. This Act replaces the alternative or cumulative remedies of new trial and review by the single remedy of review. Review of an order or judgment of a Provincial Small Cause Court should now be made within 15 days from the date of the order or judgment.

A Small Cause Court Judge may review his decisions *Isan Chunder v. Luchun Gope* I. L.R. 5 Cal. 699 ; 5 C. L. R. 559.

In the following cases review was refused although the applicant applied on the ground that he had obtained new evidence *Ram Dhan Chuckerbutty v. Joy Narain Panjah* 12 W. R. 536 ; *Brojendra Coomar Ray Chowdhry v. Wise* 19 W. R. 130 ; *Dwarka Nath Chowdhry v. Kishen Lall Chowdhry* Marsh 553.

In the cases noted below the order of the Judge was set aside by the Appellate Court as these are not good grounds for review.

When a Judge granted a review on the ground that by perusing the evidence a second time he might come to a different conclusion *Chunder Churn Auggrodany v. Loodu ram Deb* 25 W. R. 324 ; or that he has come to a different finding from that arrived at by his predecessor *Roy Meghraj v. Beejoy Gobind* I. L. R. 1 Cal. 197 ; *Ellem v. Basheeer* I. L. R. 1 Cal. 184 ; *Sham Sher Ali v. Koor kut Shah* 6 C. L. R. 550 ; but see *Abdul Rahim v. Racha Rai* I. L. R. 1 All. 363 ; or for hearing the case re-argued *Kolee Mooddeen Mundal v. Herum Mundal* 24 W. R. 186 ; *Raman v. Karunatha Tharakan* I. L. R. 2 Mad 11.

But if a Judge omits to consider the effect of an important documentary evidence, which materially affects the case it is a good ground for review *Mahadeva v. Shappani* I. L. R. 1 Mad 396.

An application having been made to a Small Cause Court Judge to set aside an *ex parte* decree, the Judge found from the record that the defendant had been personally served with summons. He accordingly requested the pleader to tell his client to be present 3 days after to be examined. As neither applicant nor his pleader was present on that date, the Judge rejected the application without issuing notice on the opposite party. A second application was then made under Sec. 21 Act XI of 1865. *Held*, that the communication to the pleader was an informal proceeding, and as applicant had not been summoned in due form his application should not have been rejected in his absence, and the Judge was bound to hear the second application *Gopal Chunder Roy v. Arwan Shaikh* 15 W. R. 402.

It may be competent to the Judge of a Small Cause Court, on hearing one of the defendants, to set aside an *ex parte* decree as to all, if justice requires it, e. g. if the objection is one which is common to the case of all ; but

he is not bound, because the decree is set aside as to one defendant, to interfere with the decision against others who do not object *Dookhee Khan v. Rajessuree Ranee* 15 W. R. 371.

In dealing with applications for a new trial a Small Cause Court Judge is bound to observe and respect the manifest intention of Sec. 624 C. C. P. *Shumsher Ali v. Koorkut Shah* 6 C. L. R. 549; *Ishan Chander Bannerjee v. Lochun Gope* 5 C. L. R. 559; *Shumsher Ally v. Kurkut Shah* I. L.R. 6 Cal. 236.

Where the notice of application for a new trial is given without a deposit, a subsequent deposit made within proper time will not entitle him to ask for a new trial *Koylash Chunder Sannel v. Asulut Shaikh* 14 W. R. 42.

Notice of intention to apply for a new trial is an essential step towards such application, and without such preliminary step an application can not be entertained *Petumber Shadhoo Khan v. Doya Moyee Dassee* 12 W. R. 17.

Upon granting a new trial the Judge need not re-open the whole case but may lay down any issue or issues of law or of fact having reference to the grounds on which the judgment is impeached *Ishan Chunder Singh v. Hadan Sirdar* 11 W. R. 525.

Trial of suits by Registrar.

18. (1) Suits cognizable by the Registrar under section 12, sub-sections (3) and (4), shall be tried by him, and decrees passed therein shall be executed by him, in like manner in all respects as the Judge might try the suits, and execute the decrees, respectively.

(2) The Judge may transfer to his own file, or to that of the Additional Judge if an Additional

Judge has been appointed, any suit or other proceeding pending on the file of the Registrar.

For the power of a Registrar to state cases see section 646 C. C. P.

Admission, return, and rejection of plaints by Registrar.

19. (1) When the Judge of a Court of Small Causes is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may admit a plaint, or return or reject a plaint for any reason for which the Judge might return or reject it.

(2) The Judge may, of his own motion or on the application of a party, return or reject a plaint which has been admitted by the Registrar, or admit a plaint which has been returned or rejected by him :

In the following case it was held that a plaint should not be rejected *Bishen Sahaya Singh v. Beer Kishore Singh* 8 W. R. 296.

In those cases plaint was rejected *Mahomed Hossein v. Potun* 20 W. R. 147 ; *Raja Ram Tewary v. Luchman Pershad* 8 W.R. 15 ; *Ramasami Mudaliar v. Sellattammal* I. L. R. 4 Mad 375.

Amendment was allowed in these cases *Maharaja of Vizianagram v. Challagh* 12 B. L. R. 443 ; *Delhi and London Bank v. Miller* 7 B.L.R. Ap. 65; *Keder Nath Dass v. Protab Chander Das* I. L. R. 6.Cal. 626 ; *Bhyro Dutt v. Lekhranee Kooer* 16 W. R. 123.

Amendment was disallowed in the following cases *Raghoonundun Singh v. Gopal Chunder Chowdhury* 20 W. R. 17. ; *Damodar Madhowje v. Parmanundas Jeewandas* I. L. R. 7 Bom. 155.

When a plaint is presented to a wrong Court, it should be returned *Khandu Murshvar v. Sheoji* 5 Bom. 212.

A Court of Small Causes, is not competent to set aside an order rejecting a plaint *Jitmul Valad Bahirav Das v. Ram Chandra Valad* 5 Bom 97.

Provided that, where a party applies for the return or rejection or the admission of a plaint under this sub-section, and his application is not made at the first sitting of the Judge after the day on which the Registrar admitted, or returned or rejected, the plaint, the Judge shall dismiss the application unless the applicant satisfies him that there was *sufficient cause* for not making the application at that sitting.

Sufficient cause—A similar expression is used in the last para of Sec. 368 C. C. P. (See *Benode v. Sharat* 10 C. L. R. 449, 453.)

An allegation of a mere miscalculation of time is not sufficient cause *Zaibulnessa v. Kulsum* I. L. R. 1 All 250. Pleading of illness is not sufficient cause for not filing a plaint in time *Mazoom v. Panchoo* 1 W. R. Misc. 23.

The illness of the Mookhtear 9 Moore 26 ; a *bonafide* mistake which is not unreasonable *Hardatrai Shrikisan das v. Victoria Finance Association* 3 Bom. 60 ; and the negligence of the attorney's clerk to inform the date fixed for hearing *The Oriental Finance Corporation v. The Mercantile Credit* 2 Bom. 267 may be sufficient cause.

Sufficient cause is to be proved either by the oath of the applicant or by an application supported by an affidavit *Hardatrai Shrikisandas v. Victoria Finance Association* 3 Bom. 60 and *Anundmoyi Dassee v. Anund Sundur Mozoomdar* 13 W. R. 237.

Passing of decrees by Registrar on confession.

20. (1) If, before the date appointed for the hearing of a suit, the defendant or his agent duly authorised in that behalf appears before the Registrar and admits the plaintiff's claim, the Registrar may, if the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, pass against the defendant, upon the admission, a decree which shall have the same effect as a decree passed by the Judge.

(2) Where a decree has been passed by the Registrar under sub-section (1), the Judge may grant an application for review of judgment, and re-hear the suit, on the same conditions, on the same grounds and in the same manner as if the decree had been passed by himself.

For review, refer to notes under Sec. 17 (1) Proviso—

Execution of decrees by Registrar.

21. (1) If the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may, subject to any instructions which he may have received from the Judge or, with respect to decrees or orders made by an Additional Judge, from the Additional Judge, make any orders in respect of applications for the execution of decrees and orders made by the Court of which he is Registrar, or sent to that Court for execution, which the Judge might make under this Act.

(2) The Judge, in the case of any decree or

order with respect to the execution of which the Registrar has made an order under sub-section (1), or the Additional Judge, in the case of any such decree or order which has been made by himself and with respect to which proceedings have not been taken by the Judge under this sub-section, may, of his own motion, or on application made by a party within fifteen days from the date of the order of the Registrar or of the execution of any process issued in pursuance of that order, reverse or modify the order.

This is a section in which a distinction is made between the power of a Judge and an Additional Judge regarding the orders made by the Registrar in respect of applications for the execution of decrees.

The Judge can of his own motion or on the application of the parties if presented within 15 days from the date of the order of the Registrar reverse or modify the order made by the Registrar in respect of the execution of decrees or that of an Additional Judge ; whereas the Additional Judge can do so in those cases in which proceedings have not been taken by the Judge.

(3) The period of fifteen days mentioned in sub-section (2) shall be computed in accordance with the provisions of the Indian Limitation Act, 1877, as though the application of the party were an application for review of judgment.

If the period of limitation expires on a day when the Court is closed, the application for review may be filed on the day of the re-opening of the Court (see Sec. 5 of Act XV of 1877) *Gopal Chund Nowluckha v. Kristo Chunder Dass* I. L. R. 5 Cal. 314 ; *Khosie Lal Mohton v. Gunesh Dutt* I. L. R. 7 Cal. 690.

In computing the period of limitation the day on which the right to apply accrues shall be excluded. Where a decree is sought to be reviewed, the day on which the judgment was passed and the time required for obtaining a copy of it, must be excluded (Sec. 12 of Act XV of 1877). See W. R. Gap No 645 ; *Secretary of State v. Mootoo Sandry* 13 W. R. 245 ; 9 C. L. R. 293.

Adjournment of cases by chief ministerial officer.

22. When the Judge of a Court of Small Causes is absent and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar or other chief ministerial officer of the Court may exercise from time to time the power which the Court possesses of adjourning the hearing of any suit or other proceeding, and fix a day for the further hearing thereof.

Return of plaints in suits involving questions of title.

23. (1) Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depend upon the proof or disproof of a title to immoveable property or other title which such a Court cannot finally determine, the Court may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the title.

The reason because that a Small Cause Court has to go into the question of title in trying a suit is not sufficient for the Court in declining jurisdiction see *Ram Jebun Koylee v. Shahazadee Begum* 9 W. R. 336 ; *Shumbhoo Chunder Mowlick v. Pran Kristo Mowlick* 13 W. R. 105 ;

Darma Ayyan v. Rajapa Ayyan I. L. R. 2 Mad. 181 ; *Akbarali v. Jezuddin* I. L. R. 8 Cal. 399 ; *Alagirisami v. Innasi Udeyan* I. L. R. 3 Mad. 127 ; *Grish Chunder Ray v. Gobind Singh* 17 W. R. 88 ; *Shunker Lall v. Ramkallee Dhamin* 18 W. R. 104 ; *Manappa Mudali v. S. T. Mccarthy* I. L. R. 3 Mad. 192 ; 2 M. H. R. 184.

But in those cases which involve intricate questions of title, the Court should return the plaint.

The jurisdiction of the Small Cause Court is not barred because it has to enquire into a question of title to land as incident to the question of the value of trees taken off the land *Shumbhoo Chowdhary v. Mr. R. Combs.* 2 W. R. 170.

(2) When a Court returns a plaint under sub-section (1), it shall comply with the provisions of the second paragraph of section 57 of the Code of Civil Procedure and make such order with respect to costs as it deems just, and the Court shall, for the purposes of the Indian Limitation Act, 1877, be deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction.

For the procedure that is to be followed in returning the plaint see Sec. 57 C. C. P.

Where a plaint is returned by a Court for presentation to another Court, the time during which the plaint was on the file of the former must be excluded *Obhoy Churn Nundi v. Kritartha Moyi Dassee* I. L. R. 7 Cal. 284.

As regards limitation see Sec. 14 of Act XV of 1877.

Appeals from certain orders of Courts of Small Causes.

24. Where an order specified in section 588, clause (29), of the Code of Civil Procedure is made by a Court of Small Causes, an appeal therefrom shall lie to the District Court.

A material change is made in this section. Orders under any of the provisions of the Civil Procedure Code, imposing fines, or for the arrest or imprisonment of any person except when such imprisonment is in execution of a decree are apealable.

This clause does not apply to attachment for contempt *Navivahoo v. Narotam Dass* I. L. R. 7 Bom. 5.

No appeal lies from an order refusing to fine a recusant witness *Pran Kristo Deo v. Kalee Dass Deo* 7 W. R. 460.

Revision of decrees and orders of Courts of Small Causes.

25. The High Court, for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, may call for the case and pass such order with respect thereto as it thinks fit.

In this section provision has been made for the parties to move the High Court to call for the records of the Lower Court and to satisfy itself that the decree or order was passed according to law ; whereas in the old Act there was no such provision.

For observations made on this section by the select committee see Appendix I para 20.

When an acting Judge of a Small Cause Court had made an order which the permanent incumbent on his return considered to have been made without authority of law :—*Held*, that the High Court was not competent to take up the case on a reference from the Judge ; but that the party aggrieved should apply to the High Court, if he thought fit, to exercise its extraordinary powers under Sec. 15 of the High Court Act *Deep Chand v. Gowree* 13 W. R. 98.

Amendment of the second schedule to the Code of Civil Procedure.

26. In the second schedule to the Code of Civil Procedure—

(*a*) for "CHAPTER VIII.—Section 111. Set-off" the following shall be substituted, namely:—

"CHAPTER VIII.—Of Written Statements and Set-off ;"

(*b*) the following shall be inserted between the portion of the schedule referring to CHAPTER XV. and that referring to CHAPTER XVII., namely :—

"CHAPTER XVI.—Of Affidavits" ;

(*c*) in the particulars against CHAPTER XIX, for "275 to 280 (both inclusive), 283" the following shall be substituted, namely :—

"275 to 283 (both inclusive)" ;

(*d*) for "CHAPTER XLVII.—Of Review of Judgment" the following shall be substituted, namely :—

"CHAPTER XLVII.—Of Review of Judgment, sections 623, 626 and 630" ; and

(*e*) for "CHAPTER XLIX.—Miscellaneous, sections 640 to 647 (both inclusive) sections 649 to 652 (both inclusive)" the following shall be substituted, namely :—

"CHAPTER XLIX.—Miscellaneous."

For the second schedule to the Code of Civil Procedure See Appendix IV.

Finality of decrees and orders.

27. Save as provided by this Act a decree or order made under the foregoing provisions of this Act by a Court of Small Causes shall be final.

An order passed in execution of a decree of a Small Cause Court with respect to the liability of property to

attachment and sale is not final, but may be questioned in a regular suit in the same manner as a like order might be questioned when passed in execution of a decree of an ordinary Civil Court. 3 N. W. R. 208.

A Court has no power to alter or add to a decree in the execution of it 1 N. W. P. 112.

See sections 24 and 25.

CHAPTER V.

SUPPLEMENTAL PROVISIONS.

Subordination of Courts of Small Causes.

28. (1) A Court of Small Causes shall be subject to the administrative control of the District Court and to the superintendence of the High Court, and shall—

(a) keep such registers, books and accounts as the High Court from time to time prescribes, and

(b) comply with such requisitions as may be made by the District Court, the High Court or the Local Government for records, returns and statements in such form and manner as the authority making the requisition directs.

(2) The relation of the District Court to a Court of Small Causes, with respect to administrative control, shall be the same as that of the District Court to a Civil Court of the lowest grade competent to try an original suit of the value of five thousand rupees in that portion of the territo-

ries administered by the Local Government in which the Court of Small Causes is established.

The powers conferred by Sec. 4, Act. XI of 1865 (Sec. 28 of Act. IX of 1887) do not enable the High Court to interfere with the decision of a Court of Small Causes refusing an application on the part of a defendant to send for a copy of a letter which was filed in another suit and which defendant desired to put in as evidence. *In the matter of Munnoo Singh* 19 W. R. 306.

Seal.

29. A Court of Small Causes shall use a seal of such form and dimensions as are prescribed by the Local Government.

Abolition of Courts of Small Causes

30. The Local Government may, by order in writing, abolish a Court of Small Causes.

Saving of power to appoint Judge of Court of Small Causes to other office.

31. (1) Nothing in this Act shall be construed to prevent the Local Government from appointing a person who is a Judge or Additional Judge of a Court of Small Causes to be also a Judge of any other Civil Court or to be a Magistrate of any class or to hold any other public office.

(2) When a Judge or Additional Judge is so appointed, the ministerial officers of his Court shall, subject to any rules which the Local Government may make in this behalf, be deemed to be ministerial officers appointed to aid him in the discharge of the duties of the other office.

Section 51, Act. XI of 1865 (section 31 of Act. IX of 1887) did not authorize the Local Government to permanently and unconditionally invest the Judge of a Small

Cause Court with the powers of a Principal Sudder Ameen. The section only contemplated an occasional investment of the powers, and contingent on the state of the business of the Court *Mussamut Bahinto Bejee Koir v. Rai Damodar Das* 5 N. W. P. 55.

In permanently investing under sec. 51 of the old Act, the Judges of the Small Cause Court with the powers of a Principal Sudder Ameen (Subordinate Judge), the Local Government did not exceed its power or contravene the law, although the occasional investure of Small Cause Court Judges by name, from time to time, with the powers of a Principal Sudder Ameen, may have the mode of procedure contemplated by the Legislature as the one likely to be adopted *Crosthwaite v. Hamilton* I. L. R. 1 All. 87.

Application of Act to Courts invested with jurisdiction of Court of Small Causes.

32. (1) So much of Chapters III. and IV. as relates to—

(*a*) the nature of the suits cognizable by Courts of Small Causes,

(*b*) the exclusion of the jurisdiction of other Courts in those suits,

(*c*) the practice and procedure of Courts of Small Causes,

(*d*) appeal from certain orders of those Courts and revision of cases decided by them, and

(*e*) the finality of their decrees and orders subject to such appeal and revision as are provided by this Act,

applies to Courts invested by or under any enactment for the time being in force with the jurisdiction of a Court of Small Causes so far as regards the exercise of that jurisdiction by those Courts.

(2) Nothing in sub-section (1) with respect to Courts invested with the jurisdiction of a Court of Small Causes applies to suits instituted or proceedings commenced in those Courts before the date on which they were invested with that jurisdiction.

The investiture of a Munsiff with the powers of a Small Cause Court under Sec. 29 of Act VI of 1871, does not deprive parties to pending suits of any right of appeal which they might have had ; the general rule being that the law as it existed when the action commenced must decide the rights of the parties, unless the legislative authority expresses a clear intention to vary those rights *Ghotue Mundal v. Kajroo* 16 W. R. 227.

Application of Act and Code to Court so invested as to two Courts.

33. A Court invested with the jurisdiction of a Court of Small Causes, with respect to the exercise of that jurisdiction, and the same Court, with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure, be deemed to be different Courts.

Modification of Code as so applied.

34. Notwithstanding anything in the last two foregoing sections,—

(*a*) when, in exercise of the jurisdiction of a Court of Small Causes, a Court invested with that jurisdiction sends a decree for execution to itself as a Court having jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, or

(*b*) when a Court, in the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, sends a decree for execution to itself as a Court invested with the jurisdiction of a Court of Small Causes,—

the documents mentioned in section 224 of the Code of Civil Procedure shall not be sent with the decree unless in any case the Court, by order in writing, requires them to be sent.

Continuance of proceedings of abolished Courts.

35. (1) Where a Court of Small Causes, or a Court invested with the jurisdiction of a Court of Small Causes, has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to the case, whether before or after decree, which, if the Court had not ceased to have jurisdiction, might have been had therein, may be had in the Court which, if the suit out of which the proceeding has arisen were about to be instituted, would have jurisdiction to try the suit.

(2) Nothing in this section applies to cases for which special provision is made in the Code of Civil Procedure, as extended to Courts of Small Causes, or in any other enactment for the time being in force.

A certificate of non-satisfaction, under Act XI of 1865 Section 20, having been obtained from the Court of Small Causes at Arrah, the decree was transferred to the Munsiff's Court there, when the judgment-creditor objected that execution was barred by limitation :

Held, that though the Munsiff was not competent to

adjudicate upon the question of limitation as a Munsiff, yet, as the successor in power of the abolished Court of Small Causes at Arrah (whose jurisdiction was transferred to the Munsiff's Court), he had jurisdiction to decide the objection *Soomut Dass v. Bhoobun Lall* 24 W. R.151.

Amendment of Indian Limitation Act.

36. In the third division of the second schedule to the Indian Limitation Act, 1877,—

(*a*) after No. 160 the following shall be inserted, namely :—

"160 A. For a review of judgment by Provincial Court of Small Causes, or by a Court invested with the jurisdiction of a Provincial Court of Small Causes when exercising that jurisdiction.	Ditto.	The date of the decree or order."

and (*b*) in No. 173, the words, figures and letter "No. 160 A and" shall be inserted before the word and figures "No. 162."

Publication of certain orders.

37. All orders required by this Act to be made in writing by the local Government shall be published in the official Gazette.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(*See section 2.*)

Number and year.	Subject or title.	Extent of repeal.
1	2	3
Act XI of 1865.	Mufassal Small Cause Courts Act.	So much as has not been repealed.
Act VI of 1871.	Bengal Civil Courts Act.	Section 30.
Act III of 1873.	Madras Civil Courts Act.	Section 29, paragraph one.
Act XV of 1874.	Laws Local Extent Act.	So much of the first schedule as relates to Acts XI of 1865 and X of 1867.
Act XII of 1881.	North-Western Provinces Rent Act.	In section 2, the words and figures "and Act No. XI of 1865, section 52."
Regulation I of 1877.	Ajmere Courts Regulation.	Section 33.

THE SECOND SCHEDULE.

SUITS EXCEPTED FROM THE COGNIZANCE OF A COURT OF SMALL CAUSES.

(*See section 15*).

(1) A suit concerning an act or order purporting to be done or made by the Governor-General in Council or a Local Government, or by the Governor-General or a Governor, or by a Member

of the Council of the Governor-General or of the Governor of Madras or Bombay, in his official capacity, or concerning an act purporting to be done by any person by order of the Governor-General in Council or a Local Government ;

(2) A suit concerning an act purporting to be done by any person in pursuance of a judgment or order of a Court or of a judicial officer acting in the execution of his office ;

See *Joy Lall Shaikh v. Brojo Nath Paul* 9 W. R. 162.

(3) a suit concerning an act or order purporting to be done or made by any other officer of the Government in his official capacity, or by a Court of Wards, or by an officer of a Court of Wards in the execution of his office ;

(4) a suit for the possession of immoveable property or for the recovery of an interest in such property ;

Read the following cases—

Gopal Chunder Biswas v. Rumzan Sirdar 13 W. R. 275 ; *Shanthi Lakshmin Arasamma v. Vepa Venkatramadas* 3 Mad. 237 ; *Rohiny Kant Ghose v. Maha Bharuth Nag* 10 W. R. 258.

(5) a suit for the partition of immoveable property ;

(6) a suit by a mortgagee of immoveable property for the foreclosure of the mortgage or for the sale of the property, or by a mortgagor of immoveable property for the redemption of the mortgage ;

See *Ram Gopal Shah v. Ram Gopal Shah* 9 W.R. 136 ; *Bhubotariyee Ghosamy v. Jugger Nath Tewary* 16 W. R. 58 ; *Surjapal Singh v. Jairamgir* I. L. R. 7 All. 835;

(7) a suit for the assessment, enhancement, abatement or apportionment of the rent of immoveable property ;

See *Joy Kishore Chowdherain v. Nubee Buksh* 17 W. R. 178 ; *Bafshetti v. Venkataramena* I. L. R. 3 Bom. 154.

(8) a suit for the recovery of rent, other than house-rent, unless the Judge of the Court of Small Causes has been expressly invested by the Local Government with authority to exercise jurisdiction with respect thereto ;

See *Kalidas v. Vallabh Das* I. L. R. 6 Bom. 79 ; *Babshetti v. Venkataramana* I. L. R. 3 Bom. 154.

(9) a suit concerning the liability of land to be assessed to land-revenue ;

(10) a suit to restrain waste ;

(11) a suit for the determination or enforcement of any other right to or interest in immoveable property ;

(12) a suit for the possession of an hereditary office or of an interest in such an office, including a suit to establish an exclusive or periodically recurring right to discharge the functions of an office ;

(13) a suit to enforce payment of the allowance or fees respectively called *málikána* and *hakk*, or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immoveable property or in an hereditary office or in a shrine or other religious institution ;

See *Logan v. Kunji* I. L. R. 9. Mad. 110 ; *Ebrahim Saib v. Nagasami Gurukal* I. L. R. 3 Mad. 9 ; *David v.*

Grish Chunder Guha I. L. R. 9 Cal. 183 ; *Appana v. Nagia* I. L. R. 6 Bom. 512 ; *Shaikh Koreem Bux v. Nomeero* 20 W. R. 349 ; *Nanku v. The Board of Revenue* I. L. R. 1 All. 444 ; *Subramania Chetti v. Prince of Arcot* I. L. R. 2 Mad. 146.

(14) a suit to recover from a person to whom compensation has been paid under the Land Acquisition Act, 1870, the whole or any part of the compensation ;

(15) a suit for the specific performance or rescission of a contract ;

See *Nilkanth Surmah v. Bishen Bashee* 6 W. R. 322 ;

(16) a suit for the rectification or cancellation of an instrument ;

(17) a suit to obtain an injunction ;

(18) a suit relating to a trust, including a suit to make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust, and a suit by a co-trustee to enforce against the estate of a deceased trustee a claim for contribution ;

(19) a suit for a declaratory decree, not being a suit instituted under section 283 or section 332 of the Code of Civil Procedure ;

See *Agur Mullick Mundul v. Deb Nath Chatterjee* 24 W. R. 190 ; *Itcha Moyee Dassee v. Bama Sunduree Dassee* 25 W. R. 73 ; *Mohomed Koya v. Kasmi* I. L. R. 9 Mad. 206 ; *Radha Kishen v. Chotey Lall* 3 All. 155 ; *Jetheabhai Chand v. Bai Lakhu* 6 Bom. 27 ; *Ram Narayan Mookerjee v. Srimati Sawada Debi* 6 B. L. R. App. 39.

(20) a suit instituted under section 283 or section 332 of the Code of Civil Procedure ;

See *Moozdeen Gazee v. Dinobundhoo Gossamee* 13 W. R. 99 ; *Ram Dhun Biswas v. Kefal Biswas* 10 W. R. 141 ; *Shiboo Narain Singh v. Mudden Ally, Natabar Nandi v. Kali Dass Pali* I. L. R. 7 Cal. 608 ; *Balmokund v. Lekraj* 3 All. 156 ; *Godha v. Naiek Ram* I. L. R. 7 All. 152 ; *Akbar Ali v. Jezuddin* I. L. R. 8 Cal. 399 ; *Chhagan Lal v. Jeshan Rav.* I. L. R. 4 Bom. 503 ; *Mahomed Koya v. Kasmi* I. L. R. 9 Mad. 206 ;

(21) a suit to set aside an attachment by a Court or a revenue-authority, or a sale, mortgage, lease or other transfer by a Court or a revenue-authority or by a guardian ;

(22) a suit for property which the plaintiff has conveyed while insane ;

(23) a suit to alter or set aside a decision, decree or order of a Court or of a person acting in a judicial capacity ;

See *Bama v. Kamini* 10 W. R. 352.

(24) a suit to contest an award ;

(25) a suit upon a foreign judgment as defined in the Code of Civil Procedure or upon a judgment obtained in British India ;

See *Anakattil Narayana Krishnan Karthavn v. Kocheri Pelo* I. L. R. 6 Mad. 191.

(26) a suit to compel a refund of assets improperly distributed under section 295 of the Code of Civil Procedure ;

See *Grish Chandra v. Durga Das* I. L. R. 5 Cal. 494; *Sahai Ram v. Shiblal* I. L. R. 7 All. 378.

(27) a suit under the Indian Succession Act, 1865, section 320 or section 321, or under the Probate and Administration Act, 1881, section

139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets ;

(28) a suit for a legacy or for the whole or a share of a residue bequeathed by a testator, or for the whole or a share of the property of an intestate ;

See *Grish Chunder Singh v. Anna Dassee* 17 W.R. 46 ; *Nobin Chandra Gossamee v. Dribo Moyee Debee* 17 W. R. 520.

(29) a suit—

(*a*) for a dissolution of partnership or for the winding-up of the business of a partnership after its dissolution ;

(*b*) for an account of partnership-transactions ; or

See *Surrut Chunder Kur v. Ram Shunkur Surmah* 10 W. R. 214 ; *Ram Tarun Acharjee v. Peary Mohun Acharjee* 7 C. L. R. 557.

(*c*) for a balance of partnership-account, unless the balance has been struck by the parties or their agents ;

(30) a suit for an account of property and for its due administration under decree ;

(31) any other suit for an account, including a suit by a mortgagor, after the mortgage has been satisfied, to recover surplus collections received by the mortgagee, and a suit for the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant ;

See *Srishteedhur Bose v. Shama Churn Ghose* 14 W. R.

58 ; *Krishna Kinkur Roy v. Madhub Chunder Chackerbutty* 21 W. R. 283 ; 5 M. H.R. 383 ; *Ram Coomar Sen v. Ram Comul* I. L. R. 10 Cal. 388.

(32) a suit for a general average loss or for salvage ;

See *Kishore Singh v. Gunnesh Mookerjee* 9 W. R. 252.

(33) a suit for compensation in respect of collision between ships ;

(34) a suit on a policy of insurance or for the recovery of any premium paid under any such policy ;

(35) a suit for compensation—

(*a*) for loss occasioned by the death of a person caused by actionable wrong ;

(*b*) for wrongful arrest, restraint or confinement ;

(*c*) for malicious prosecution ;

See *Pran Kristo Banerjee v. Nuddear Chand Chatterjee* 10 W. R. 115.

(*d*) for libel ;

(*e*) for slander ;

(*f*) for adultery or seduction ;

(*g*) for breach of contract of betrothal or promise of marriage ;

(*h*) for inducing a person to break a contract made with the plaintiff ;

(*i*) for obstruction of an easement or diversion of a watercourse ;

(*j*) for illegal, improper or excessive distress or attachment ;

See *Meer Hyder Ali v. Shaikh Jafar Ali* 24 W. R

222, I. L. R. 1 Cal. 183 ; *Makund Lal v. Nasiruddin* I. L. R. 4 All. 416.

(*k*) for improper arrest under Chapter XXXIV of the Code of Civil Procedure, or in respect of the issue of an injunction wrongfully obtained under Chapter XXXV of that Code ; or

(*l*) for injury to the person in any case not specified in the foregoing sub-clauses of this clause ;

See *Bhairab Chandra Chuckerbutty v. Mahendra Chundra Chuckerbutty* 4 B. L. R. App. 59 ; *Ali Baksh Doctor v. Sheikh Shamiruddin* 4 B. L. R. A. C. 8 ; *Durga Pershad v. Asa Jolah* I. L. R. 5 Cal. 925.

(36) a suit by a Muhammadan for exigible (*mu'ajjal*) or deferred (*mu'wajjal*) dower ;

(37) a suit for the restitution of conjugal rights, for the recovery of a wife, for the custody of a minor, or for a divorce ;

(38) a suit relating to maintenance ;

See *Nobin Kalee Debea v. Bindoobashinee Debea* 5 W. R. S. C. C. 5 ; *Bhugwan Chunder Bose v. Bindoobashinee Dassee* 6 W. R. 286 ; *Kaminee Dassee v. Bisho Nath Shaha* 9 W. R. 214 ; *Mussamut Hema Kooeree v. Ajoodhya Pershad* 24 W. R. 474 ; *Nurbibi v. Husen Lal* I. L. R. 7 Bom. 537 ; *Valu v. Ganga* I. L. R. 7 Bom. 85 ; *Durjan Singh v. Mussamut Sibia* 7 All. 329 ; *Pahlud Singh v. Allud Singh* 6 All. 91 ; *Mussamut Guneshee v. Chotay Lal* 3 All. 117 ; *Sidlingapa v. Sidava* I. L. R. 2 Bom. 624.

(39) a suit for arrears of land-revenue, village-expenses or other sums payable to the representative of a village-community or to his heir or other successor in title ;

See *Ahmaduddin Khan v. Maglis Rai* I. L. R. 5 All. 438 (F. B.).

(40) a suit for profits payable by the representative of a village-community or by his heir or other successor in title after payment of land-revenue, village- expenses and other sums ;

See note below Sec. 39.

(41) a suit for contribution by a sharer in joint property in respect of a payment made by him of money due from a co-sharer, or by a manager of joint property, or a member of an undivided family, in respect of a payment made by him on account of the property or family ;

The following cases may be referred to with advantage. *Madoo Soodun Mozumdar v. Bindoabashinnee Dassee* 6 W. R 15 Ref. ; *Rambur Chittangeo v. Modhoosoodun Paul Chowdhry* 7 W. R, 377 ; *Sreeputty Roy v. Loharam Roy* 7 W. R. 384 ; *Shaboo Majee v. Noorai Mollah, Shaik Joreep v. Shaikh Nuboo, Bharut Chundra Dutta v. Dengur Gope* 7 W. R. 386 ; *Brommoroop Goswamee v. Prannath Chowdhry* 7 W. R. 17 ; *Kalee Nath Roy v. Nilaram Paramanick* 7 W. R. 32 ; *Ramtonu Acharjee v. Peary Mohun Acharjee* I. L. R. 6 Cal. 551 ; *Nobin Krishna Chakravati v. Ram Kumar Chakravati* I. L. R. 7 Cal. 605 ; *Ram Kumar Sen v. Ram Comal Sen* I. L. R. 10 Cal. 388 ; *Futteh Ali v. Gunga Nath Roy* I. L. R. 8 Cal. 113 ; *Shahi Ram v. Shib Lal* I. L. R. 7 All. 378 ; *Gade Chillapilla Ran v. Gade Balarama Krishnama* I. L. R. 6 Mad. 424 ; *Nobin Krishna Chuckrabati v. Ram Kumar Chuckrabati, Bunnijan Bibi v. Mohammed Hossein* 9 C. L. R. 90 ; *Futteh Ali Chowdhry v. Gunga Nath Roy* 10 C. L R. 20 ; *Ramjai Surma v. Tai Nath Surma* 12 C. L. R. 314.

(42) a suit by one of several joint mortgagors of immoveable property for contribution in respect of money paid by him for the redemption of the mortgaged property ;

(43) a suit against the Government to recover money paid under protest in satisfaction of a claim made by a revenue-authority on account of an arrear of land-revenue or of a demand recoverable as an arrear of land-revenue ;

(44) a suit the cognizance whereof by a Court of Small Causes is barred by any enactment for the time being in force.

See *Surbo Chunder Dass v. Woomanund Roy* 11 W. R. 412 ; *Hameedoollah v. Mahamed Asghur Hossein* I. L. R. 6 Cal. 499 ; *Broja Nath Dey v. Shumboo Chunder Chatterjee* 18 W. R. 25.

APPENDIX I.

REPORT OF THE SELECT COMMITTEE.

2. *Section I.*—

We consider that this measure should extend to the whole of British India, including the Scheduled Districts. We have, therefore, removed the words which excepted the Scheduled Districts from the operation of the proposed Act.

3. *Section* 2—We have provided for the continuance of Courts established, and orders made, under the enactments repealed by Act XI of 1865.

4. *Section 3*—We have provided that the Act is not to affect any proceedings before or after decree in any suit instituted before the commencement of the Act, and we have removed from the section the reference to Act III of 1859, that Act being about to be repealed by the Council of the Governor-General. The reference to the Army Act of 1881 will be covered by the saving of special laws which we have proposed to add to the section.

5. *Section 4*—Several of the definitions have, since the Bill was introduced, been enacted in the General Clauses Act, 1887. As section 2 of the Code of Civil Procedure extends to Courts of Small Causes, the definition of "Districts" and "District Court" seem to us to be superfluous.

6. *Section 5*—We have transferred to this section the substance of section 28.

7. *Section 7*—We have provided that the fixing of times of sitting by a Judge of more than one Court of Small Causes shall be subject to the sanction of the District Court.

8. *Section 9 (section 10 of Bill as revised by us)*—We have provided for orders under this section being made after consultation with the High Court.

9. *Section 11 (section 12 of Bill as revised)*—We have proposed that the Registrar of a Court of Small Causes shall be appointed, not by the Judge of the Court, but, as under Act XI of 1865, by the Local Government.

10. *Sections 12 and 13 (section 13 of Bill as revised)*—It is proposed to make the establishment of a Court of Small Causes part of the Civil Court Ministerial Service of the district in which the Court is situate.

11. *Section 14*—We have so amended this section as to leave unfettered the discretion of High Courts as to the powers and duties which may by rules under the section be conferred and imposed on ministerial officers of Courts of Small Causes.

12. *Section 16*—We have proposed to omit this section on the ground of its being not more necessary in the case of Courts of Small Causes than in that of other Courts.

13. *Section 19. (section 17 of Bill as revised)*—We have met the objections to proviso (*a*) by enabling the Court to take security for the performance of the decree instead of requiring the deposit of the amount of the decree, by omitting from the second schedule to the Code of Civil Procedure the dilatory sections of Chapter XLVII, and by extending the time within which an application may be made for a review of judgment.

Proviso (*b*) has been transferred to the Bill to amend the Code of Civil Procedure which is now pending before the Council of the Governor-General.

14. *Section 20*—We have given effect to the opinion, which is very generally expressed, that the whole of Chapter VIII of the Code should extend to Courts of Small Causes.

15. *Section 21*—Seeing that sections 223 and 228 of the Code extend to Courts of Small Causes, this section seems to us to be unnecessary. We have therefore removed it from the Bill.

16. *Section 23 (section 19 of Bill as revised)*—We have acted on a suggestion that some discretion should be given to the Judge as to the admission or dismissal of an application which is made under this section subsequently to the first sitting of the Judge after the plaint was admitted, or returned or rejected, by the Registrar.

17. *Section 22 of Bill as revised*—This section has been suggested to us by the Judge of the Courts of Small Causes at Surat and Broach.

18. *Section 23 of Bill as revised*—This section is based on suggestions made by several Judges of experience in different parts of the country.

19. *Section 24 of Bill as revised*—This section supplements the defective expression of section 589 of the Code of Civil Procedure.

20. *Section 25 of Bill as revised*—The opinion appears to be universal that the ruling of the Privy Council in *Amir Hassan Khan versus Sheo Baksh Singh* (I. L. R. 11 Cal. 6) has rendered it absolutely necessary to extend the jurisdiction which the High Courts possess over the judicial proceedings of Courts of Small Causes and of other Courts invested with their powers. It is of course desirable that nothing should be done to encourage needless resort to the High Court, but, as the Hon'ble the Chief Justice and Judges of the High Court at Fort William have observed, this consideration should be one rather for the High Court than to be used to remove an important branch of the lower judicature from all control and so to deprive it of the advantage of a subordinate relation to that authority which exists for the express purpose of guiding the inferior tribunals by its exposition of the law.

21. *Section 26 of Bill as revised*—The only part of this section which calls for notice here is that which applies Chapter XVI of the Code of Civil Procedure to Courts of Small Causes. That Chapter does apply to Presidency Courts and the balance of opinion is strongly in favour of making it applicable to Provincial Courts of Small Causes also.

22. *Section 29 (section 28 of Bill as revised)*—We have added a sub-section descriptive of the nature of the administrative control to be vested in the District Court.

23. *Section 32 (section 31 of Bill as revised)*—We have so expressed this section as to make it clear that the Local Government may appoint a Judge of a Court of Small Causes to be a Registrar under the Indian Registration Act, 1877, or to hold any other public office.

24. *Section 33, sub-section (1) (section 32, sub-section (1), of Bill as revised)*—We have added words supplementary to section 25 of the Bill as revised, and a sub-section for the purpose of solving a question which has frequently been raised.

25. *Section 34 of Bill as revised*—This section is suggested by the case reported at I. L. R. 9 Bom. 237.

26. *Section 35 of Bill as revised*—This section has been suggested by the opinions on the Bill, and follows a section inserted for the same purpose in the Bengal Civil Courts Bill now pending before the Council of the Governor-General.

27. *The First Schedule*—We have, we believe, completed the list of necessary repeals.

28. *The Second Schedule*—By our amendments of this schedule we have placed the following suits within the cognizance of Provincial Courts of Small Causes, namely :—

(a) suits against local authorities, including municipalities ;

(b) suits for recovery of rent of agricultural land in certain circumstances ;

(c) suits for enforcement of lien on moveable property, and by pawnors for the redemption or recovery of pledges ; and

(d) suits under section 283 and section 332 of the Code of Civil Procedure :

and we have excluded from the cognizance of those Courts the following suits, namely :—

(a) suits to recover from a person to whom compensation has been paid under the Land Acquisition Act, 1870, the whole or any part of the compensation ;

(b) suits relating to trusts ;

(c) suits for property which a plaintiff has conveyed while insane ;

(d) suits on judgments ;

(e) suits to compel refund of assets improperly distributed under section 295 of the Code of Civil Procedure ;

(f) suits for the winding-up of the business of a partnership after its dissolution ;

(g) suits for surplus collections of mortgaged property or for profits of immoveable property wrongfully received ;

(h) suits for loss occasioned by the death of a person caused by actionable wrong ;

(i) suits for compensation for certain torts ;

(j) suits for dower ;

(k) suits for custody of minors ;

(l) suits for shares in perquisites of hereditary offices and in offerings at shrines ; and

(m) suits by one of several joint mortgagors of immoveable property for contribution in respect of money paid for the redemption of the mortgaged property.

STATEMENT OF OBJECTS AND REASONS.

THE suits cognizable in Courts of Small Causes are, subject to certain provisoes, described in section 6, Act XI of 1865, as "claims for money due on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages, when the debt, damage or demand does not exceed in amount or value the sum of five hundred rupees whether on balance of account or otherwise:" and section 586 of the Code of Civil Procedure provides that "no second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees." Since section 6 of the Act of 1865 was enacted, a vast quantity of case-law has grown up around it, and, as the rulings of the Courts have not been uniform, doubts constantly arise on the question whether a suit is or is not a suit of the nature cognizable by a Court of Small Causes, and consequently, whether or not, where the suit is of value not exceeding five hundred rupees and the original decree made in it was not final but was open to appeal, an appeal will also lie from the appellate decree in the suit. It appears to the Government of India that the conflicting constructions placed on section 6, of which some are due to the progress of legislation during the last twenty years (I. L. R. 3 All. 66), render a more accurate definition necessary of the suits of which Courts of Small Causes may take cognizance, and that legislation to this end should follow sections 18 and 19 of the Presidency Small Cause Courts Act, 1882, in declaring the jurisdiction of those courts to extend to all suits of a civil nature, subject to specified exceptions. This Bill has accordingly been prepared, its primary object being to remove the doubts now felt as to the effect of section 6, Act XI of 1865; and, as several sections and parts of sections of that Act have, from time to time, been repealed

and other sections are obsolete as regards both expression and utility, it has been considered desirable to repeal the Act and re-enact the substance of the extant portions of it.

2. The parts of the Bill which appear to call for remark will be noticed in the following paragraphs.

3. *Section 3*—The limited extent of the savings in this section, as compared with section 12 of the Act of 1865, is due to the Government of India having decided to move the legislature to repeal Act XI of 1841, and connected Acts, regarding Military Courts of Requests for Native Officers and Soldiers, and so much of Bombay Regulation XXII of 1827 as relates to the trial of small suits by superintendents of bazars in military stations in the presidency of Bombay.

4. *Section 8*—Inconvenience has resulted from the restrictive terms in which section 15 of the Act of 1865 was drawn. It is proposed, therefore, to empower Local Governments to appoint Additional Judges without limit of time.

5. *Section 9*—Sections 29 and 30, Act XI of 1865 appear to be little, if at all, used. It seems unnecessary, therefore, to retain them. If it is deemed desirable that two Judges should anywhere sit together as a bench for the trial of particular suits or classes of suits, a bench can be constituted under section 9 of the Bill, corresponding with section 31 of the Act of 1865.

6. *Section 17*—This section declares the jurisdiction of a Court of Small Causes to extend to all suits, subject to certain exceptions specified in the second schedule to the Bill.

7. *Second Schedule*—This schedule follows, with slight modifications section 19 of the Presidency Small Cause Courts Act, 1882, so far as that section goes.

8. As regards No. (11) of the suits specified in the schedule, it has been held that suits for the redemption

of a mortgage of moveable property (16 W. R. 58) or for the sale of moveable property by enforcement of lien (9 W.R. 136) do not now, and (I. L. R.7 All. 855) ought not to, lie in a Court of Small Causes.

9. The suits referred to in No. (20) are of two descriptions—

(*a*) by a decree-holder to have the right of his judgment-debtor declared to property of which the attachment has been raised ; and

(*b*) by the owner of attached property after disallowance of his objection to the attachment, either against the decree-holder or an auction-purchaser, to recover the property.

Suits of description (*a*), being suits for declaratory decrees, appear to have been held by most, if not all, High Courts not to be cognizable by a Court of Small Causes (10. W. R. 141 ; I. L. R. 4 Bom. 503 ; 3 All. H. C. Rep. 156 : Panjab Record, No. 84 of 1870). As to suits of description (*b*), there is a conflict of authority (I. L. R. 7 All. 152, and cases there cited). It would seem, apart from section 6 of Act XI of 1865, that if suits of the one description ought not to be cognizable by Courts of Small Causes, the jurisdiction of those Courts ought to be barred in respect of suits of the other description also.

10. The suits referred to in No. (30) are of superior importance, and there should be a right of appeal from decrees passed in them. The rulings at I. L. R. 3 All. 747 and in the cases there cited, were made solely with reference to the language of section 6 of the Act of 1865. Most of these suits have been excluded from the jurisdiction of Presidency Small Cause Courts.

11. As regards the suits which No. (32) is intended to exclude from the jurisdiction of Courts of Small Causes, Westropp, C. J, has observed that "the very possible necessity of varying the maintenance from time to time, and

of enquiring into the circumstances of the claimant, or of the family estate, or the family itself, shows how unsuitable maintenance suits are for the Small Cause Courts" (I. L. R. 2 Bom. 630). Arrears of maintenance are usually claimed on one of four grounds—

(*a*) the legal right of the plaintiff to maintenance ;

(*b*) a decree of Court ;

(*c*) an award of arbitrators fixing the maintenance, or

(*d*) a special bond or other contract for the payment of maintenance.

Suits on ground (*a*) involve intricate questions of title, and these on grounds (*b*) and (*c*) have been held not to be cognizable by a Court of Small Causes (6 All. H. C. Rep. 91 and cases there cited ; 3 All. H. C. Rep. 117 and 7 All. H. C. Rep. 329). Suits on ground (*d*) are at present cognizable by a Court of Small Causes. But seeing that even in those suits questions may be raised as to re-adjustment of maintenance (5 C. L. R. 18), and possibly as to forfeiture (I. L. R. 7 Bom. 84), it seems desirable that suits for maintenance generally, including suits of the kind referred to at I. L. R. 7 Bom. 537, should be excluded from the jurisdiction of Courts of Small Causes.

12. As regards No. (33), reference may be made to 1 All. H. C. Rep. 205, and I. L. R. 1 All. 444, 2 All. 905, and 9 Cal. 183. Moreover, in suits which No. (33) is intended to cover, claims may be, and often are, included which ought not to be cognizable by a Court of Small Causes.

13. As regards Nos. (34) and (35) reference may be made to the case reported at I. L. R. 5 All. 438. It seems proper that such a suit as is there described, involving, as it may, intricate village-accounts and important questions of right, should not be cognizable by a Court of Small Causes. Moreover, the decree in the suit should be open to appeal, as ordinarily the decree of a Revenue Court would be in a suit by a recorded co-sharer against a lambardar.

14. There appears to be no sufficient reason for excluding any suits for contribution from the jurisdiction of Courts of Small Causes, except the suits referred to in Nos. (36) and (38). As to the cognizance of suits for contribution generally under the Act of 1865, there has been some conflict of authority, the High Court at Fort William holding them not to be cognizable by Courts of Small Causes (B. L. R. F. B. 675, and I. L. R. 10 Cal. 388), and the High Courts at Madras and Allahabad holding them to be cognizable by those Courts (5 Mad. H. C. Rep 200, and I. L. R. 3 All. 66).

There would seem, apart from section 6 of Act XI of 1865, to be no sufficient ground for excluding from the cognizance of a Court of Small Causes such a suit as that reported at I. L. R. 7 All. 378.

15. No. (38) will exclude the following among other suits:—

(*a*) suits for compensation for infringing copyright (I. L. R. 6 Cal. 499);

(*b*) suits for compensation for infringing the exclusive privilege of an inventor (Act XV, 1859, section 22);

(*c*) suits against Sovereign Princes or Ruling Chiefs, or Ambassadors of Envoys of Foreign States, (Act XIV, 1882, section 433);

(*d*) suits for dissolution of marriage or judicial separation (Act IV, 1869); and

(*e*) suits founded on the liability of a contributory (Act VI, 1882, section 125).

16. *Sections 19 and 34*—As to the second proviso to section 21 of the Act of 1865, reference may be made to I. L. R. 6 Cal. 236 and 8 Cal. 287. As the law now stands, a person wishing to have a decree set aside may apply for (*a*) a new trial under section 21, Act XI of 1865, or (*b*) a review under Chapter XLVII of the Code, or (*c*) both a new trial and a review. "It is difficult," as

observed by the learned Chief Justice of the High Court at Fort William, "to conceive any reasons which would justify a new trial which would not also afford good grounds for a review" (I. L. R. 6. Cal. 238). It is proposed, therefore, to replace the alternative or cumulative remedies of new trial and review by the single remedy of review, but to impose on applications for review restrictions similar to those imposed by the existing law on applications for new trial.

17. *Section 21*—This section supplements section 223 of the Code of Civil Procedure, which extends to Courts of Small Causes. Section 20 of the Act of 1865, which the section supersedes, appears in some places to have been construed to require a decree-holder to proceed in the first instance against moveable property even when the moveable property of the judgment-debtor is known to be of no appreciable value.

18. *Section 26*—Under section 45 of the Act of 1865, it is the duty of the Clerk of the Court to "take charge of and keep an account of all moneys payable or paid into or out of Court" and to "enter an account of all such moneys in a book belonging to the Court to be kept by such Clerk for that purpose." The terms of that section have been held to preclude the transfer of the duty of receiving moneys and keeping accounts in a Courts of Small Causes to the special staff of accountants which in some provinces is employed at the head-quarters of each district to receive and account for moneys paid into the Civil Courts located there. It has been provided in section 26 of the Bill that the High Court may, if it sees fit, relieve the clerk of the Court of his duties as cashier and accountant.

12. *Section 32*—The High Court for the North-Western Provinces had held (5 All. H. C. Rep. 55) that section 51 of the Act of 1865 does not authorize the Local Govern-

ment to permanently and unconditionally invest the Judge of a Small Cause Court with the powers of a Principal Sadar Amin, and that the section only contemplates an occasional investment of the powers, and one contingent on the state of the business of the Court. Under section 32 of the Bill the question will not again arise.

20. In sections 32 and 33 regard has been had to I. L. R. 8 Bom. 230, 9 Bom. 237, 1 All. 87, 1 All. 624, and 3 All. 710. It has been made clear that, for the purposes of sections 223 and 295 of the Code of Civil Procedure and section 21 of the Bill, the Court of a Judge of a Court of Small Causes when the Judge is acting as such, and the Court of the same Judge when the Judge has been appointed to be and is acting as a Subordinate Judge, are different Courts, and that, for the same purposes, the Court of a Subordinate Judge when the Judge is acting as such, and the Court of the same Judge when the Judge has been invested with the jurisdiction of a Court of a Small Causes and is exercising that jurisdiction, are different Courts.

21. The first proviso to section 21 of Act XI of 1865 has been omitted because its retention has been rendered unnecessary by the extension of section 108 of the Code of Civil Procedure to Courts of Small Causes.

22. Section 52 of the Act of 1865 has been omitted, as it is believed not to be used.

23. It is proposed by the first schedule to make section 648 of the Code of Civil Procedure, which extends to the Presidency Small Cause Courts, extend also to Provincial Courts of Small Causes.

24. It is proposed by the same schedule to repeal so much of the second schedule of the Code of Civil Procedure as extends sections 121 to 136 of the Code to Provincial Courts of Small Causes. These sections do not extend to Presidency Small Cause Courts, and their provisions, which contemplate elaborate and lengthened trials

in suits of superior importance, are incompatible with the speedy disposal of the petty suits cognizable by a Court of Small Causes. The want of the sections is not likely to be really felt in Courts of Small Causes, while their application to those Courts is not unlikely to be taken advantage of for the purpose of delaying proceedings.

25. So much of sections 137, 447, 453, 454 and 456 of the Code of Civil Procedure as requires applications to Courts of Small Causes to be supported by affidavit is proposed to be repealed. Chapter XVI of the Code, respecting affidavits, does not extend to Provincial Courts of Small Causes.

APPENDIX II.

The Clerk of a Mofassil Small Cause Court, appointed under Sec. 44, Act XI of 1865, is competent to sign requisitions to other Courts, with a view to the service of process, provided that such requisitions shall issue *in the name* of the presiding Judge, and be signed as *by order* of that functionary. (H. C. C. O. No. 27 of 6th September 1864.)

The following Rules of practice shall be observed in Courts of Small Causes :—

Issue of summons-its contents.

(1) On presentation of a plaint duly verified in accordance with Secs : 48 to 52 C. C. P. there shall issue, under the seal of the Court, a summons, which shall be numbered and dated of the day when issued, and shall set forth the names of the plaintiff and defendant, the cause of action, and the amount sued for.

(2) The summons shall ordinarily be served on the defendant seven clear days before the day on which the Court shall be holden at which the cause is to be tried, unless the Court shall otherwise order ; but a summons may be made returnable at a longer or a shorter date in the discretion of the Court, with reference to distance or to any other cause.

Time of service when returnable.

(3) A Receipt or plaint note shall, on the filing of the plaint, be given to the plaintiff, containing the number of the summons and of the suit in the Register Book, and no execution shall be issued, nor any money paid out of Court, except on production of the said receipt, or by order of the Judge.

A Receipt or Plaint note.

(4) The cause of action shall be transcribed from the plaint into the Summons Book, and the substance of the cause of action shall be entered in the Register Book * : both books shall be in the forms given in pages 220 & 221 of High Court Circular book.

Summons Book and Register.

(5) No misnomer or inaccurate description of any person or place in any such summons shall vitiate the same, if the person or place be therein described so as to be commonly known.

Misnomer or error of description in summons.

(6) The substance of the evidence, the judgment, and the decree shall be entered in the Summons Book, as in form A given in page 221 of High Court Circular book.

What to be entered in summons Book.

* These books must be kept in English. Subordinate Judges and Munsiffs vested with S. C. C. powers under Sec. 29, Act VI of 1871 should keep the Summons Book and the "General Register of Suits" (Form No. 116, Schedule IV, and Sec. 58, Act X of 1877

Order of payment in instalments. Mode of execution.

(7) When any order is made for the payment of any debt or damages, costs, or other sums of money by instalments, the same shall be payable at the office of the Clerk, at such periods as the Court shall order, and if no order be made fixing the dates of payments of the instalments, then the first instalment shall become due at the expiration of one calender month from the day of making the order and every successive instalment at a like period of one calender month from the day of the previous instalment becoming due ; and after default in payment of any instalment, execution may be sued out for the whole amount then remaining unpaid, unless the Court shall otherwise order : provided that such execution shall not issue upon such default, if the instalment or instalments then due shall be paid into Court at any time before execution is applied for.

When defendant deposits sum decreed & moves for new trial.

(8) In cases in which the defendant has moved the Court for a new trial, and has deposited the sum decreed against him, the Court shall detain the money until the new trial be granted, or until such other time as the Court shall order. In the event of notice not being given to the Court as aforesaid, or of the rule being refused, the plaintiff may take the money out of the Court without further delay.

Duty of plaintiff. Consequence of default.

(9) If the Court be of opinion that a new trial should be granted,† the plaintiff shall proceed to set his cause down for re-hearing within six days, unless some other

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the latter in place of the Small Cause Court Register of Civil Suits (H.C. C. Q. No. 29 of 12th August 1880.)

† When a new trial has been granted by a Court of Small Causes under Sec : 21, Act XI of 1865, the filing of a fresh plaint should not be required (H. C. C. O. No. 3 of 26th January 1872.)

time be granted by the Court, and, in default, the defendant shall be at liberty to withdraw his deposit. Should the new trial be granted, the order shall be made on such terms as to the payment of costs as the Court shall direct. If upon the second trial the verdict is entered for the plaintiff, the judgment may be satisfied *pro tanto* out of the sum already deposited for debt and costs by defendant, with right of execution against the goods or person of the defendant for the amount, if any, which he is liable to pay over and above the sum deposited.

Defendant, if successful, may withdraw his deposit.

(10) If upon the second trial the verdict is entered for the defendant, he shall be at liberty to withdraw his deposit.

Time within which warrants of execution must be executed.

(11) No warrant of execution or commitment shall be executed after the expiration of two calender months from the date thereof: provided that second and successive warrants of execution may be issued by order of the Judge at the expiration of two calender months from the date of each on payment of the prescribed costs of execution by the party at whose instance the same are issued.

Unexecuted warrant. Proceeds of execution.

(12) Every officer required to execute any warrant of execution, if he shall not have executed such warrant, shall return the same to the office of the Court at the expiration of one month from the date of the issue thereof ; and every officer levying or receiving money by virtue of any process out of the Court, shall forthwith, or as soon after the receipt thereof as practicable, pay over the same to the Court.

Circular orders which are addressed to "all Civil Courts" are intended to apply also to Courts of Small Causes. (H. C. C. O. No. 11 of 18th June 1873.)

District Judges shall, in dealing with the budget estimates, contingent bills, &c. of Small Cause Courts, be guided by the general rules applicable in the case of the other Subordinate Civil Courts. (H. C. C. O. No. 38 of 23rd November 1880.)

All communications, including the monthly returns, from Small Cause Courts to the High Court should be submitted in the first instance to the District Judge, to whom the Small Cause Court is subordinate. (H. C. C. O. No. 12 of 9th March 1878.)

TABLE OF FEES.

(1) There shall be charged for serving and executing the following processes the fees specified opposite the same severally and respectively (H. C. C. O. No. 13 of 15th March 1878, and No. 2 of 6th January 1880.)

Parts I and II which deal with fees in the High Court and in the Courts of District and Subordinate Judges, and in the Revenue Courts when the suit in which the process is issued by any such Revenue Courts is valued at a sum exceeding Rs 1,000 have been omitted.

Table of fees for suits other than the suits herein after specified in Part IV applicable to Courts of Munsiffs and of Small Causes and Revenue Courts to which Part II does not apply—

	Rs.	A.	P.
Article 1—Summons to defendants, notice of appeal, or other notice to respondents, when the defendants or respondents are not more than four in number, *one fee*	1	„	„
When such defendants or respondents are more than four in number, then the fee above mentioned for the first four, and an additional			

fee of four annas for every such person in excess of four.

		Rs.	A.	P.
Article 2—Summons to witnesses, when the witnesses are not more than four in number, *one fee* ...		1	„	„
When the witnesses are more than four in number, then the fee above mentioned for first four, and an additional fee of four annas for every such witness in excess of four.				
Article 3—Every commission to make a local investigation or to take evidence or for any other purpose—				
(*a*) in respect of the commission		1	„	„
(*b*) in respect of the remuneration of the commissioner, or person who is to execute the commission, if such person be an officer of Government specially appointed for the purpose, *per diem.* ...		3	„	„

Note.—A sum sufficient to cover the daily fee (*b*) for such period as may be fixed by the Court for the purpose of executing the commission must be paid in addition to the fee (*a*) at the time when the commission is issued ; and, if the commission is not completely executed within the period so fixed, a further sum, sufficient to cover the daily fee (*b*) for the excess period extending from the end of that fixed period up to, and inclusive of, the date of the complete execution of the commis-

sion, must be paid before the Commissioner's report or other return to the commission is used.

		Rs.	A.	P.
Article 4—Every process of attachment of property by actual seizure—				
(*c*) in respect of the warrant of attachment.		1	„	„
(*d*) in respect of each man necessary to effect the attachment and also to ensure safe custody, when such man is to be left actually in possession, *per diem*. ...		„	4	„

Note—The daily fee (*d*) is to be paid at the time of obtaining the process, for so many days as the Court shall order, not being ordinarily less than 15 days, and the number of days required for the coming and going of the officer : but when the officer is not to be left in possession, then the daily fee is to be paid only for the time to be occupied by the officer going, in effecting the attachment, and returning. When the Inventory filed by the Judgment-creditor shows the property to be of such small value that the expense of keeping it in custody may probably exceed the value, the Court shall fix the daily fee with reference to the provisions of section 269 of the Code of Civil Procedure.

Article 5—Every process in execution of a decree by the arrest of the person. ..	4	„	„

Article 6—Every order for the sale of pro-

perty, other than an order for the sale of distrained property under Act VIII (B. C.) of 1885—

	Rs. A. P.
(*e*) in respect of the Order of sale	1 „ „
(*f*) by way of Poundage on the gross amount realized by the sale up to Rs. 1,000	2 per cent
together with a further fee on all excess of gross proceeds beyond Rs. 1,000	1 per cent.

The practice of shewing poundage fees as Civil deposits in the accounts is incorrect. Money realized in cash in cases in which the decree-holder purchases and sets off the amount of his decree against his purchase money, in whole or in part, under the arrangement contemplated in Chapter I, Rule 8, clauses (*a*), (*b*), (*c*), (*d*), page 13, Civil Rules and Orders, should be held not as poundage fees but as earnest money paid in by the purchasing decree-holder, out of which the poundage fees can be realized on confirmation of sale.

Note.— The portion (*e*) of this fee must be paid when the process is obtained, and the poundage (*f*) at the time of making the application for payment of the proceeds of sale out of Court, as herein-after provided.

Article 7.—Every rule, notice, proclamation, injunction, or other order not speci-

	Rs.	A.	P.
fied in any preceding *Article* of this part	1	„	„

PART IV.

Table of fees in the Courts of Munsiffs, in Small Cause Courts, and in the Revenue Courts when the suit is for debt, or damage to personal property, or for rent and the claim does not exceed Rs. 50.

	Rs.	A.	P.
Article 1.—Summons to defendants, when the defendants are not more than two in number, *one fee*	„	8	„
When the defendants are more than two in number, the fee above mentioned for the first two, and an additional fee of four annas for every such defendant in excess of two.			
Article. 2.—Summons to witnesses, in respect of each witness	„	4	„
Article 3.—Every commission to make a local investigation or to take evidence, or for any other purpose—			
(*a*) in respect of the commission	1	„	„
(*b*) in respect of the remuneration of the commissioner, or person who is to execute the commission, if such person be an officer of Government specially appointed for the purpose, *per diem* ...	3	„	„
Note.— A sum sufficient to cover the daily fee (*b*) for such period as may be fixed by the Court for the purpose of executing the commission must be paid in addition to the fee (*a*) at the time when the commission is			

issued ; and, if the commission is not completely executed within the period so fixed, a further sum, sufficient to cover the daily fee (*b*) for the excess period extending from the end of that fixed period up to, and inclusive of, the date of the complete execution of the commission, must be paid before the Commissioner's report or other return to the commission is used.

Article 4.—Every process of attachment of property by actual seizure —

	Rs.	A.	P.
(*c*) in respect of the warrant of Attachment	„	8	„
(*d*) in respect of each man necessary to effect the Attachment, and also to ensure safe custody, when such man is to be left actually in possession, *per diem*	„	4	„

Note.— The daily fee (*d*) is to be paid at the time of obtaining the process, for so many days as the Court shall order, not being ordinarily less than 15 days, and the number of days required for the coming and going of the officer ; but where the officer is not to be left in possession, then the daily fee is to be paid only for the time to be occupied by the officer in going, effecting the attachment, and returning.

When the inventory filed by the judgment-creditor shows the pre-

perty to be of such small value that the expense of keeping it in custody may probably exceed the value, the Court shall fix the daily fee with reference to the provisions of section 269 C. C. P.

	Rs. A. P.
Article 5.—Every process in execution of a decree by arrest of the person.	1 „ „
Article 6.—Every order for the sale of property, other than an order for the sale of distrained property under Act VIII (B. C.) of 1885—	
(*e*) in respect of the order of sale	1 „ „
(*f*) by way of poundage on the gross amount realized by the sale up to Rs. 1,000	2 per cent.
together with a further fee on all excess of gross proceeds beyond Rs. 1,000	1 per cent.
Vide foot note to Art 6 cl. (*f*) of Part III.	
Note.— The portion (*e*) of this fee must be paid when the process is obtained, and the poundage (*f*) at the time of making the application for payment of the proceeds of sale out of Court, as hereinafter provided.	
Article 7.—Every rule, notice, proclamation, injunction, or other order not specified in any preceding article of this part	1 „ „

(2) Notwithstanding Rule (1), no fee shall be chargeable for serving and executing any process, such as a notice, rule, summons, or warrant of arrest, which may

be issued by any Court of its own motion, solely for the purpose of taking cognizance of, and punishing any act done, or words spoken, in contempt of its authority.

(2 a) Fees levied from parties in cases where the local enquiries are conducted by Judicial officers should be levied in accordance with the scale laid down in Article 3, Parts III, and IV, and should be shown in the return. (H. C. G. L. No. 13 of 15th August 1884)

(*b*) In the case of a witness, whose attendance is required by the Court of its own motion for any purpose other than that mentioned in paragraph 1 of this Rule, the fee chargeable for serving and executing the process shall, together with the witness expenses, be paid into Court by the party whom the Court may direct to pay the same.

(3) No process which comes within the operation of Rule (1) shall be drawn up for service or execution, except upon an application made to the Court for that purpose in writing, on a document bearing upon its face stamps not less in amount than the fee which by Rule (1) is directed to be charged for serving and executing the process so sought to be drawn up. This application may, however, at the option of the party making it, be included in the petition by which he moves the Court to order the process to issue ; but in that case the petition must bear the requisite stamps for the process fee, in addition to such stamps, if any, as are needed for its own validity : and, in either case, the filing of the application, thus duly stamped, shall constitute payment of the fee chargeable for the process.

(*b*) In cases in which the process is to be served in the jurisdiction of another Court, the proper fee chargeable under Rule (1) read with Rule (*b*) shall be levied, in the manner above directed, on the application for the transmission of the process to that Court, and a note shall be

made on the process stating that this has been done. A Court which receives from another Court, whether in the same province or not, a process bearing a certificate that the proper fee has been levied, shall cause it to be served without further charge. (Rule No. 14 of 3rd July 1885)

(4) In cases which are covered by the note to articles 3 and 4 of Parts III, and IV of the Table of Fees in Rule (1), the additional fee which may become payable after the process has been actually issued shall be paid by filing a written requisition to the Court to receive the fee, which document shall bear on the face of it stamps not less in amount than the additional fee, together with a memorandum of the purpose for which it is paid.

(5) The proceeds of a sale effected in execution of any decree are to be paid out of Court only on an application made for that purpose in writing, and the additional fee (*f*), article 6, Parts III and IV, must be paid by stamps affixed to, or impressed upon, the first of such applications, whether it be or be not made by the person who obtained the order for sale, or whether it does or does not extend to the whole of the proceeds. No fee will be chargeable upon any such application subsequent to the first.

N. B—The fees paid in pursuance of these rules must in all proceedings be deemed and treated as part of the necessary and proper costs of the party who pays them.

(7) A separate charge is to be made for each copy to be served of the rules, notices, proclamations, injunctions, &c, specified in article 7, Parts III, and IV of Rule (1) except in the case of rules, notices, &c. addressed to parties to the suit. When they are addressed to such parties, the charge should be made in accordance with the principle applied in the case of summons to defendants in article 1, Parts III, and IV respectively. (H. C. C. O. No. 22 of 8th June 1878.)

(8) Notices served on creditors (other than the decree-holder), mentioned in an application for insolvency under clause (*f*), section 345 of the Code of Civil Procedure, shall be charged under article 7 separately for each creditor served. (H. C. C. O. No. 18 of 26th April 1879).

(9) Although no limit of time is prescribed for applications for refund of process fees paid under article 4 (d) Parts III and IV, yet, as, these can be granted only on view of the stamps originally filed, which are liable to be destroyed with the process record at the end of a year, parties should be warned that there is a probability if delay is allowed to occur, that it may become impossible to obtain a refund of the money due. (H. C. C. O. No. 25 of 1st July 1878.)

(10) The Munsiff or other Judge shall give to the person entitled to a refund of stamp value a certificate payable out of the cash in the hands of the Court, and debitable in the Treasury accounts to Stamp Revenue. (H. C. G.L. No. 12 of 11th June 1877.)

The percentage leviable under Article 6, clause (f), Parts III & IV of the above rules, should be calculated on multiples of Rs. 25. That is, a poundage fee of 8 annas is leviable for every Rs. 25, or part of Rs. 25, realized by the sale, up to Rs. 1,000. For realizations exceeding Rs. 1,000, an additional fee of 4 annas for every Rs. 25, or part thereof, should be levied (Rule No. 12, of 13th June 1882.)

GOVERNMENT CIRCULAR No. 23, *dated, April 9th* 1879.

Rules for the maintenance and custody, while under attachment, of live-stock and other movable property above the value of Rs. 20.

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* When the property attached does not exceed Rs. 20 in value it may be sold at once. If the debtor or the decree-holder object on the ground that the property is worth more, the attaching officer may convoke a Punchayet for determining its proper value.

I. The attaching officer shall give the debtor, or in his absence, any present adult member of his family, the option of having the attached property kept on his premises, or in some other place in the village, on condition that a suitable place for its safe custody be provided by him.

II. If no such suitable place be provided, the officer shall remove the property to the Court at the decree-holder's expense. In the event of the decree-holder failing to provide the necessary funds, the attachment shall be withdrawn.

III. Whenever attached property is kept at the place where it is attached, the officer shall forthwith report the fact to the Court, and shall, with his report, forward an accurate list of the property seized, such that the Court may thereon at once issue the proclamation of sale prescribed by section 287.

IV. If the debtor shall give his consent in writing to the sale of the property without awaiting the expiry of the term prescribed in section 290, the officer shall receive the same and forward it without delay to the Court for its orders.

V. When property is removed to the Court, it shall be kept by the Nazir on his own sole responsibility in such place as may be approved by the Court. If the property cannot, from its nature or bulk, be conveniently kept in the Court premises, or in the personal custody of the Nazir, he may, subject to approval by the Court, make such arrangements for its safe custody under his own supervision as may be most convenient and economical, and the court may fix the remuneration to be allowed to the persons, not being officers of the Court, in whose custody the property is kept.

The cost of proclamation should be paid at the time of applying for attachment of all moveable properties of more than Rs 20 in value. (H. C. C O No 19 dated 28th April 1879)

VI. When property remains at the place where it is attached in the custody of the attaching officer, and any person other than the judgment-debtor shall claim the same, or any part of it, the officer shall nevertheless, unless the decree-holder desires to withdraw the attachment of the property so claimed, remain in possession, and shall direct the claimant to prefer his claim to the Court.

VII. If the decree-holder shall withdraw an attachment, or if it shall be withdrawn under Rule II or Rule IX, the attaching officer shall inform the debtor, or in his absence, an adult member of his family, that the property is at his disposal.

In the absence of any person to take charge of it or in case the officer shall have had notice of claim by a person other than the judgment-debtor, the officer shall, if the property has been moved from the premises in which it was seized, replace it where it was found at the time of seizure.

VIII. Whenever live-stock is kept at the place where it has been attached, the judgment-debtor shall be at liberty to undertake the due feeding and tending of it under the supervision of the attaching officer ; but the latter shall, if required by the decree-holder, and on his paying for the same at a rate to be fixed by the District Judge, and subject to the orders of the Court under whose orders the attachment is made, engage the services of as many persons as may be necessary for the safe custody of it.

IX. In the event of the judgment-debtor failing to feed attached live-stock, the officer shall call upon the decree-holder either to pay for feeding it on the spot, or for the expenses attending its removal to the Court. If the decree-holder shall fail to provide for either, the officer shall report the matter to the Court without delay.

APPENDIX III.

List shewing suits cognizable by Courts of Small Causes with the period of limitation applicable in each case.

No. of Article of the second Schedule of the Limitation Act.	Description of Suit.	Period of Limitation.	Time from which period begins to run.
2	For compensation for doing, or for omitting to do, an act alleged to be in pursuance of any enactment in force for the time being in British India.	90 days.	When the Act or omission takes place.
6	Upon a Statute, Act, Regulation or Bye-law, for a penalty or forfeiture.	1 year.	When the penalty or forfeiture is incurred.
7	For the wages of a household servant, artizan or labourer not provided for by this schedule, No. 4.	Do.	When the wages accrue due.
8	For the price of food or drink sold by the keeper of a hotel, tavern or lodging-house.	Do.	When the food or drink is delivered.
9	For the price of lodging.	Do.	When the price becomes payable.
17	Against Government for compensation for land ac-	Do.	The date of determining the

No. of Article of the second Schedule of the Limitation Act.	Description of Suit.	Period of Limitation.	Time from which period begins to run.
	quired for public purposes.		amount of the compensation.
18	Like suit for compensation when the acquisition is not completed.	1 year.	The date of the refusal to complete.
30	Against a carrier for compensation for losing or injuring goods.	2 years.	When the loss or injury occurs.
31	Against a carrier for compensation for delay in delivering goods.	Do.	When the goods ought to be delivered.
32	Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Do.	When the perversion first becomes known to the person injured thereby.
39	For compensation for trespass upon immoveable property.	3 years.	The date of the trespass.
48	For specific moveable property lost, or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same.	Do.	When the person having the right to the possession of the property first learns in whose possession it is.
49	For other specific moveable property, or for compensation for wrongfully	Do.	When the property is wrongfully taken or in-

No. of Article of the second Schedule of the Limitation Act.	Description of Suit.	Period of Limitation.	Time from which period begins to run.
	taking or injuring or wrongfully detaining the same.		jured, or when the detainer's possession becomes unlawful.
50	For the hire of animals, vehicles, boats or household furniture.	3 years.	When the hire becomes payable.
51	For the balance of money advanced in payment of goods to be delivered.	Do.	When the goods ought to be delivered.
52	For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	Do.	The date of the delivery of the goods.
53	For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	3 years.	When the period of credit expires.
54	For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Do.	When the period of the proposed bill elapses.
55	For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Do.	The date of the sale.

No. of Article of the second Schedule of the Limitation Act.	Description of Suit.	Period of Limitation.	Time from which period begins to run.
56	For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	3 years	When the work is done.
57	For money payable for money lent.	Do.	When the loan is made.
58	Like suit when the lender has given a cheque for the money.	Do.	When the cheque is paid.
59	For money lent under an agreement that it shall be payable on demand.	Do.	When the loan is made.
60	For money deposited under an agreement that it shall be payable on demand.	Do.	When the demand is made.
61	For money payable to the plaintiff for money paid for the defendant.	Do.	When the money is paid.
62	For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Do.	When the money is received.
63	For money payable for interest upon money due from the defendant to the plaintiff.	Do.	When the interest becomes due.

No. of Article of the second Schedule of the Limitation Act.	Description of Suit.	Period of Limitation.	Time from which period begins to run.
64	For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	3 years.	When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf, unless where the date is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.
65	For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	3 years.	When the time specified arrives or the contingency happens.
66	On a single bond where a day is specified for payment.	Do.	The day so specified.
67	On a single bond where no such day is specified.	Do.	The date of executing the bond.
68	On a bond subject to a condition.	Do.	When the condition is broken.

No. of Article of the second Schedule of the Limitation Act.	Description of Suit.	Period of Limitation.	Time from which period begins to run.
69	On a bill of exchange or promissory note payable at a fixed time after date.	3 years.	When the bill or note falls due.
70	On a bill of exchange payable at sight, or after sight, but not at a fixed time.	Do.	When the bill is presented.
71	On a bill of exchange accepted payable at a particular place.	Do.	When the bill is presented at that place.
72	On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Do.	When the fixed time expires.
73	On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Do.	The date of the bill or note.
74	On a promissory note or bond payable by instalments.	Do.	The expiration of the first term of payment, as to the part then payable; and for the other parts the expiration of

No. of Article of the second Schedule of the Limitation Act.	Description of Suit.	Period of Limitation.	Time from which period begins to run.
			the respective terms of payment.
75	On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one instalment, the whole shall be due.	3 years.	When the first default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.
76	On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Do.	The date of the delivery to the payee.
77	On a dishonoured foreign bill where protest has been made and notice given.	Do.	When the notice is given.
78	By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance.	Do.	The date of the refusal to accept.
79	By the acceptor of an accommodation-bill against	Do.	When the acceptor pays the

No. of Article of the second Schedule of the Limitation Act.	Description of Suit.	Period of Limitation.	Time from which period begins to run.
	the drawer.		amount of the bill.
80	Suit on a bill of exchange, promissory note or bond not herein expressly provided for.	3 years.	When the bill, note or bond becomes payable.
81	By a surety against the principal debtor.	Do.	When the surety pays the creditor.
82	By a surety against a co-surety.	Do.	When the surety pays anything in excess of his own share.
83	Upon any other contract to indemnify.	Do.	When the plaintiff is actually damnified.
84	By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	Do.	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.
85	For the balance due on a	Do.	The close of the

No. of Article of the second Schedule of the Limitation Act.	Description of Suit.	Period of Limitation.	Time from which period begins to run.
	mutual, open and current account, where there have been reciprocal demands between the parties.		year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.
90	Other suits by principals against agents for neglect or misconduct.	3 years.	When the neglect or misconduct becomes known to the plaintiff.
96	For relief on the ground of mistake.	Do.	When the mistake becomes known to the plaintiff.
97	For money paid upon an existing consideration which afterwards fails.	Do.	The date of the failure.
101	For a seaman's wages.	Do.	The end of the voyage during which the wages are earned.
102	For wages not otherwise expressly provided for by this schedule.	Do.	When the wages accrue due.
108	By a lessor for the value of trees cut down by his lessee	Do.	When the trees are cut down.

No. of Article of the second Schedule of the Limitation Act.	Description of Suit.	Period of Limitation.	Time from which period begins to run.
	contrary to the terms of the lease.		
112	For a call by a company registered under any Statute or Act.	3 years.	When the call is payable.
115	For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.	Do.	When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.
116	For compensation for the breach of a contract in writing registered.	6 years.	When the period of limitation would begin to run against a suit brought on a similar contract not registered.
145	Against a depositary or pawnee to recover moveable property deposited or pawned.	Thirty years.	The date of the deposit or pawn.

APPENDIX IV.

THE SECOND SCHEDULE.

(See Section 5.)

Chapters and Sections of the Code of Civil Procedure extending to Provincial Courts of Small Causes as amended by Act IX of 1887.

Preliminary : Sections 1, 2, 3 and 5.

Chapter I—Of the Jurisdiction of the Courts and Res-Judicata, except Section 11.

Chapter II—Of the Place of suing, except section 20, paragraph 4, and sections 22 to 24 (both inclusive).

Chapter III—Of Parties and their Appearance, application and acts.

Chapter IV—Of the Frame of the suit, except section 42 and section 44, rule *a*.

Chapter V—Of the Institution of suits.

Chapter VI—Of the Issue and service of summons, except section 77.

Chapter VII—Of the Appearance of the Parties and Consequence of Non-appearance.

Chapter VIII—Of written statements and set-off.

Chapter IX—Of the examination of the Parties by the Court, except section 119.

Chapter X—Of the Discovery and Admission &c, of Documents.

Chapter XII—Section 155 first paragraph, Judgment where either party fails to produce his evidence.

Chapter XIII—Of Adjournments.

Chapter XIV—Of the summoning and Attendance of Witnesses.

Chapter XV—Of the Hearing of the suit and Examination of Witnesses, except sections 182 to 188 (both inclusive.)

Chapter XVI—Of Affidavits.

Chapter XVII—Of Judgment and Decree, except sections 204, 207, 211, 212, 213, 214 and 215.

Chapter XVIII—Sections 220, 221 and 222, of Costs .

Chapter XIX—Of the Execution of Decrees, sections 223 to 236 (both inclusive), 239 to 258 (both inclusive), 259 (except so far as relates to the recovery of wives), 266 (except so far as relates to immoveable property), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 283 (both inclusive), 284 (so far as relates to moveable property), 285, 286, 287, 288, 289, 290, 291, 292, 293 (so far as relates to re-sales under 297), 294 to 343 (both inclusive), 328 to 333 (both inclusive, so far as relates to moveable property), 336 to 343 (both inclusive).

Chapter XX—Section 360, Power to invest certain Courts with Insolvency-jurisdiction.

Chapter XXI—Of the Death, Marriage and Insolvency of Parties.

Chapter XXII—Of the Withdrawal and Adjustment of suits.

Chapter XXIII—Of payment into Court.

Chapter XXIV—Of requiring Security for Costs.

Chapter XXV—Of Commissions.

Chapter XXVI—Suits by Paupers.

Chapter XXVII—Suits by and against Government or Government servants.

Chapter XXVIII—Suits by Aliens and by and against Foreign and Native Rulers, except the first paragraph of section 433.

Chapter XXIX—Suits by and against Corporations and Companies.

Chapter XXX—Suits by and against Trustees, Executors and Administrators.

Chapter XXXI—Suits by and against Minors and Persons of unsound mind.

Chapter XXXII—Suits by and against Military men.

Chapters XXXIII—Interpleader.

Chapter XXXIV—Of Arrest and Attachment before Judgment, except as regards immoveable property.

Chapter XXXVI—Appointment of Receivers.

Chapter XXXVII—Reference to Arbitration, sections 506 to 526 (both inclusive).

Chapter XXXVIII—Of Proceedings on Agreement of Parties.

Chapter XLVI—Reference to and Revision by High Court.

Chapter XLVII—Of Review of Judgment, sections 623, 626 and 630.

Chapter XLIX—Miscellaneous.

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Judge as a Small Cause Judge, the Judge would exercise his Small Cause Court jurisdiction in trying the plaintiff's claim and his ordinary jurisdiction in trying the set-off—*Ram pratab v. Ganesh Rangnath* I. L. R. 12 Bom. 13.

Insert under cl. 8 Sch. II page 46.

A suit for arrears of rent of homestead or bustoo land is not a suit for house-rent. *Uma Charan Mandal v. Bijari Bewah.* I. L. R. 15 Cal. 174.

Insert under Cl. 38 Sch. II page 51.

A suit for arrears of fixed maintenance is a suit relating to maintenance.

Amritomoye Dasia v. Bhogiruth Chandra alias Jogessur Shadhoo. I. L. R. 15 Cal. 164.

Insert under Art. 108, page 92.

110	For arrears of rent (house-rent.) 3 years.	When the arrears become due.

Note.—But a suit to recover arrears of rent upon a registered contract is governed by Art. 116. *Umesh Chander Mundal v. Adarmoni Dasi.* I. L. R. 15 Cal. 221.

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Extract from the High Court's letter No. 1176, dated, the 17th May 1888 to the Chief Secretary to the Government of Bengal.

HIGH COURT
English Department.
CIVIL.

Present—
The Hon'ble L. R. Tottenham C.S. one of the Judges.

I am to request that you will convey to His Honour the recommendation of the Judges that copies of the work be supplied to all Small Cause Court Judges, and officers vested with Small Cause Court powers, as it is in their opinion likely to prove of much assistance to such officers.

I am much obliged for the copy of your annotated edition of the Small Cause Court Act. I will look it over at my leisure, and will no doubt find it very useful.

55 Chowringhee
Calcutta
8th April 1888.

R. F. RAMPINI.

Many thanks for the copy of the Provincial Small Cause Court Act you sent me. It will be very useful both to the Bar and the Bench.

Chupra
25th April 1888.

H. W. GORDON.